UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1994/73
24 February 1994

ENGLISH
Original: ENGLISH/FRENCH

COMMISSION ON HUMAN RIGHTS
Fiftieth session
Agenda item 19

# ADVISORY SERVICES IN THE FIELD OF HUMAN RIGHTS

## A continued United Nations human rights presence in Cambodia

## Report of the Special Representative of the Secretary-General, Mr. Michael Kirby (Australia), on the situation of human rights in Cambodia, submitted in accordance with Commission resolution 1993/6*

---

* The conclusions and recommendations of the Special Representative are contained in document E/CN.4/1994/73/Add.1.

GE.94-11278 (E)

CONTENTS


| | | Paragraphs | Page |
|---|---|---|---|
| Introduction | | 1 - 5 | 5 |
| Chapter | | | |
| I. | HISTORICAL OVERVIEW AND POLITICAL DEVELOPMENTS IN 1992 AND 1993 | 6 - 79 | 7 |
| | A. Historical overview | 7 | 7 |
| | B. Political developments and human rights during the transitional period (1992-1993) | 8 - 79 | 9 |
| II. | FIRST MISSION OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL FOR HUMAN RIGHTS TO CAMBODIA | 80 - 88 | 25 |
| III. | ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN THE CONTEXT OF RECONSTRUCTION OF THE COUNTRY | 89 - 131 | 27 |
| | A. Economic and social situation | 89 - 101 | 27 |
| | B. Work and trade unions | 102 - 104 | 29 |
| | C. Health | 105 - 111 | 30 |
| | D. Education | 112 - 117 | 31 |
| | E. Culture | 118 - 122 | 32 |
| | F. Religion | 123 - 124 | 33 |
| | G. Land mines | 125 - 131 | 33 |
| IV. | CIVIL AND POLITICAL RIGHTS | 132 - 172 | 35 |
| | A. Implementation of obligations under international instruments | 132 - 135 | 35 |
| | B. Right to an effective remedy | 136 - 137 | 36 |
| | C. Right to life | 138 - 139 | 36 |
| | D. Freedom from torture, inhuman and degrading treatment | 140 - 144 | 37 |
| | E. The right of persons deprived of their liberty to be treated humanely | 145 - 148 | 38 |
| | F. Due process | 149 - 154 | 39 |

CONTENTS (continued)


| | | Paragraphs | Page |
|---|---|---|---|
| G. | Right of review | 155 - 156 | 40 |
| H. | Illegal searches | 157 | 41 |
| I. | Freedom of religion | 158 | 41 |
| J. | Freedom of expression | 159 - 164 | 41 |
| K. | Freedom of association | 165 - 167 | 42 |
| L. | Freedom of movement | 168 - 172 | 43 |
| V. | VULNERABLE GROUPS | 173 - 228 | 44 |
| A. | Women | 173 - 186 | 44 |
| B. | Children | 187 - 195 | 46 |
| C. | Ethnic and religious minorities | 196 - 212 | 47 |
| D. | Returnees and internally displaced persons | 213 - 221 | 50 |
| E. | Handicapped | 222 - 228 | 51 |
| VI. | THE CAMBODIA OFFICE OF THE UNITED NATIONS CENTRE FOR HUMAN RIGHTS | 229 - 271 | 53 |
| A. | Establishment of the office and contacts with the Government | 229 - 230 | 53 |
| B. | Funding of the office | 231 - 232 | 53 |
| C. | Programme of activities | 233 - 251 | 54 |
| D. | Activities implemented by the office (October 1993-January 1994) | 252 - 271 | 57 |

Annexes

| | | |
|---|---|---|
| I. | Programme of work of the Special Representative during his first mission (visit to Geneva, Paris, Battambang and Bangkok) | 64 |
| II. | Letter dated 6 November from the Royal Government of Cambodia addressed to the Assistant Secretary-General for Human Rights | 69 |

## ABBREVIATIONS

| | |
|---|---|
| ANKI | Armée Nationale du Kampuchea indépendent |
| BLDP | Buddhist Liberal Democratic Party |
| CPAF | Cambodian People's Armed Forces (the armed forces of the State of Cambodia) |
| CPP | Cambodian People's Party |
| FUNCINPEC | Front Uni National pour un Cambodge Indépendent, Neutre, Pacifique et Coopératif (National United Front for an Independent, Neutral, Peaceful and Cooperative Cambodia) |
| KPNLAF | Khmer People's National Liberation Armed Forces |
| KPNLF | Khmer People's National Liberation Front |
| NADK | National Army of Democratic Kampuchea |
| PDK | Party of Democratic Kampuchea |
| PRK | People's Republic of Kampuchea |
| PRPK | People's Revolutionary Party of Kampuchea |
| SoC | State of Cambodia |
| SNC | Supreme National Council |
| UNTAC | United Nations Transitional Authority in Cambodia |

## Introduction

1. By resolution 1993/6 entitled "Situation of human rights in Cambodia", adopted on 19 February 1993, the Commission on Human Rights, recognizing that Cambodia's tragic recent history required special measures to assure the protection of human rights and the non-return to the policies and practices of the past and bearing mind the role and responsibilities of the United Nations and the international community in the process of rehabilitation and reconstruction of Cambodia, requested the Secretary-General to ensure a continued United Nations presence in Cambodia after the expiry of the mandate of the United Nations Transitional Authority in Cambodia, inter alia through the operational presence of the Centre for Human Rights, in order to:

> "(a) Manage the implementation of educational and technical assistance and advisory services programmes and to ensure their continuation;
>
> "(b) Assist the Government of Cambodia established after the election, at its request, in meeting its obligations under the human rights instruments recently acceded to, including the preparation of reports to the relevant monitoring committees;
>
> "(c) Provide support to bona fide human rights groups in Cambodia;
>
> "(d) Contribute to the creation and/or strengthening of national institutions for the promotion and protection of human rights;
>
> "(e) Continue to assist with the drafting and implementation of legislation to promote and protect human rights;
>
> "(f) Continue to assist in the training of persons responsible for the administration of justice."

2. On 1 October 1993, immediately after the end of UNTAC's mandate and its departure from Cambodia, the United Nations Centre for Human Rights established its Cambodia Office at Phnom Penh. The programme of activities elaborated by the Centre and a summary of the activities implemented by the Centre in Cambodia so far are described in paragraphs 252-271 below.

3. Also in resolution 1993/6, the Commission requested the Secretary-General to appoint a special representative:

> "(a) To maintain contact with the Government and people of Cambodia;
>
> "(b) To guide and coordinate the United Nations human rights presence in Cambodia;
>
> "(c) To assist the Government in the promotion and protection of human rights;

"(d) To report to the General Assembly at its forty-eighth session and to the Commission on Human Rights at its fiftieth session under the agenda item entitled "Advisory services in the field of human rights."

4 On 23 November 1993, the Secretary-General appointed Justice Michael Kirby as his Special Representative for human rights in Cambodia. Notwithstanding his late appointment, Justice Kirby, as requested by the Commission in resolution 1993/6, presented a report to the General Assembly (A/48/762) at its forty-eighth session. At the same session, the General Assembly adopted resolution 48/154 of 20 December 1993 in which it welcomed the establishment of an operational presence of the Centre for Human Rights in Cambodia and the appointment by the Secretary-General of a Special Representative to undertake the tasks set out in Commission resolution 1993/6.

5. The present report is submitted by the Special Representative in accordance with the request contained in paragraph 6 (d) of Commission resolution 1993/6.

# I. HISTORICAL OVERVIEW AND POLITICAL DEVELOPMENTS IN 1992 AND 1993

6. This chapter presents a brief description of the historical background and deals extensively with the human rights situation and political developments which took place in Cambodia in 1992 and 1993. The Special Representative is of the opinion that in order to understand the complex situation of human rights in Cambodia it is necessary to describe at length the events that occurred during this period.

## A. Historical overview

7. The historical background is adequately covered in a recent discussion paper issued by UNRISD. 1/ Relevant paragraphs of that paper are quoted below. The description of the situation of human rights and the political developments in 1992 and 1993 is based mainly on information from UNTAC.

> "A military coup in 1970 launched Cambodia into a full-scale civil war. As Cambodia was concurrently drawn into the war in Viet Nam, United States B-52 aircraft carpet bombed the Cambodian country-side in an effort to destroy Communist North Vietnamese forces and their vital supply lines. As many tons of explosives were dropped on Cambodia in the early 1970s as had fallen on Germany during the Second World War. More than 700,000 people were killed, and some 2 million peasants abandoned their homes and rice fields to become internal refugees in Phnom Penh and other urban centres.
>
> "On 17 April 1975 radical Khmer Rouge forces 'liberated' the country, overthrowing the American-backed Lon Nol military government and establishing Democratic Kampuchea. In human terms, the horror of the preceding years of civil war was replaced with a new kind of terror as the Khmer Rouge embarked upon a grotesque social experiment of anti-development. Within days of assuming power, the Khmer Rouge evacuated all cities, forcing virtually the entire Cambodian population into the country-side to live and work on a communal basis. Sheer human labour was directed to the establishment of a new agricultural base as a foundation for economic self-sufficiency, if not autarky. The Khmer Rouge envisaged a communist agrarian society whose achievements would rival the glories of the ancient Angkor empire.
>
> "Under Khmer Rouge rule most of the country's economic and social infrastructure was dismantled. Private property was confiscated. Factories, vehicles, industrial equipment and goods were destroyed. All economic activity became part of the state apparatus. There were no markets and no independent production or means of exchange; currency was abolished. Schools ceased to function and many were destroyed or put to other uses. The country's Buddhist pagodas were defaced and converted into communal dining halls and storage sheds. Many former urban dwellers ('new people' or non-peasants), individuals connected with the previous regimes, and educated individuals in general were targeted for execution. Families were divided. Living conditions under the Khmer Rouge rule were extremely harsh, with collective manual labour for up to 18 hours a day, often with only starvation rations of food. By 1977 communal cooking and eating were introduced throughout much of the country. Scrounging for

food or hoarding was punishable by death. Dissent often was rewarded by death. Over the course of the 'three years, eight months and twenty days' of the Khmer Rouge experiment as many as one million people (i.e., one in seven Cambodians) were tortured and executed, or died of hard labour, malnutrition and disease - a manifestation of auto-genocide unique in world history.

"Vietnamese troops invaded Cambodia in late 1978 to stem repeated and bloody border violations by the Khmer Rouge. The forces of Democratic Kampuchea offered limited resistance, and were pushed to the Thai border where over a period of years and with international support, they were able to regain military strength. In 1982 the Khmer Rouge entered into an alliance with Cambodia's non-Communist resistance forces, establishing the Coalition Government of Democratic Kampuchea (CGDK) under the nominal leadership of HRH Prince Norodom Sihanouk. This government-in-exile retained international recognition throughout the 1980s, including membership in the United Nations General Assembly. In Cambodia, meanwhile, the Vietnamese installed a Communist-style regime known as the People's Republic of Kampuchea (PRK).

"After nearly a decade of war and the 'bitter and sour times' of Khmer Rouge rule, Cambodia in 1979 was a ruined country. Much of its educated or trained manpower either had not survived the 'Killing Fields' or had fled the country. The remaining population was traumatized, weak from hunger and disease, and greatly demoralized from the almost complete destruction of the Khmer social fabric. The country's productive infrastructure lay in ruins. So great were the physical and psychological ravages endured by the Cambodian people, including the social dislocation caused by the deaths of hundreds of thousands and the flight across the Thai border of a large segment of the surviving population, that the first Western observers to reach Cambodia in 1979 questioned the very survival of the Cambodian people.

"Cambodia's resurrection demanded the creation of a normal economic and social life out of an almost complete void. An international emergency relief effort provided food, clothing, medical supplies, rice seed, fertilizers, pesticides, agricultural equipment, vehicles, handling equipment and fuel. The relief efforts also helped to re-establish more than 100 clinics, hospitals and some 6,000 schools.

"Although Cambodia's humanitarian, rehabilitation and development needs remained immense, the 'Kampuchean emergency' was deemed to have passed in 1982. A new period of international isolation was imposed on the People's Republic of Kampuchea as punishment for being the Vietnamese installed successor to Pol Pot's Khmer Rouge regime. Such isolation, however, also punished the Cambodian people by depriving them of the international assistance required to rebuild their lives as well as to begin the reconstruction of their shattered country.

"Despite an almost total political and economic embargo throughout the 1980s, the Cambodian people made immense progress in rebuilding their country. Given the starting point of 1979, a kind of 'Year Zero' in the history of the country, and in the face of overwhelming difficulties,

including the Western embargo on development assistance, quite remarkable achievements were realized, including the establishment of a government apparatus and administrative structure, the re-establishment of the economy including the development of new agricultural policies and systems of land tenure, the rehabilitation of the productive sectors of the economy and, in particular, the re-establishment and rapid quantitative expansion of the education and health care sectors."

## B. Political developments and human rights during the transitional period (1992-1993)

### 1. The Paris Peace Agreements

8. On 23 October 1991, following a decade of protracted negotiations, the four Cambodian factions, together with representatives of 18 Member States, 2/ signed in Paris the agreements on a comprehensive political settlement of the Cambodia Conflict. 3/ These agreements were to provide the framework for a "continuing process of national reconciliation and an enhanced role for the United Nations, thus enabling the Cambodian people to determine their own political future through free and fair elections organized and conducted by the United Nations in a neutral political environment with full respect for the national sovereignty of Cambodia". 4/

9. The signing of the Agreements marked the beginning of the "transitional period" in Cambodia, running up to the formation of a new Cambodian Government following free and fair elections. During that period Cambodian sovereignty was to be embodied in a Supreme National Council (SNC), made up of the four Cambodian factions under the chairmanship of Prince Norodom Sihanouk Varman. The SNC was to "delegate" to UNTAC "all powers necessary to ensure the implementation" of the accords. The United Nations Security Council endorsed the Agreements in its resolution 718 (1991) and requested the Secretary-General to prepare a detailed plan of implementation.

10. The Security Council in resolution 717 (1991) established the United Nations Advance Mission in Cambodia (UNAMIC) immediately after the signing of the accords to assist the Cambodian parties to maintain the cease-fire and to prepare for the deployment of UNTAC. The latter was established by Security Council resolution 745 (1992) of 28 February 1992 for a period not exceeding 18 months and began to be operational on 15 March 1992. It consisted of seven components (military, police, civilian, electoral, repatriation, human rights and rehabilitation) and had a very broad mandate geared to organizing and ensuring free and fair elections and a smooth transition to a representative government.

### 2. Obstacles in the implementation of the Paris Agreements

11. The signing of the Paris Agreements led to the disengagement from the conflict of most signatory countries. However, if the international and regional dimensions of the conflict were thus solved, crucial differences between rival Cambodian factions remained, as Cambodians and UNTAC learnt at their expense during the transitional period.

12. Almost continuous small-scale cease-fire violations, at times evolving into open confrontations, plagued the peace process. From June 1992 to June 1993, at least 2,490 cease-fire violations were recorded by UNTAC. They were due to continued confrontations between the two main armed forces, the NADK and the CPAF. Two thirds of these violations took place in the still contested provinces of Kompong Thom, Preah Vihear and Siem Reap. Throughout the transitional period, cease-fire violations steadily increased from 62 in June 1992 to a peak of 457 in June 1993.

13. During the same period, at least 2,517 Cambodians were the victims of armed confrontations, according to UNTAC records. They included 958 killed and 1,559 wounded. Civilian casualties accounted for most of these victims (1,537). Combatants from the four factions accounted for 1,204 of the casualties (CPAF, 719; NADK, 429; KPNLAF, 28; ANKI, 28). The victims also included 71 UNTAC personnel, including 18 killed. Ethnic violence further resulted in the killing, mostly by NADK units, of 120 civilian Vietnamese, including many women and children, and the wounding of 80 others. These figures do not take into account the numerous victims of non-military political violence which plagued the electoral process, particularly from September 1992 to June 1993.

14. The single most important obstacle faced by the United Nations in its efforts to implement the Paris Agreements was the refusal of the Party of Democratic Kampuchea (PDK) (official name of the Khmer Rouge) to open up the zones under its control and to canton, disarm and demobilize its armed forces as set forth in the Paris Agreements. During the first six months of 1992, the PDK apparently came to conclude that it had more to lose than gain in fulfilling its obligations as signatory of the Paris Agreements. Its attitude towards the peace process throughout the transitional period evolved from initial goodwill to increasing reluctance, and from open resistance to violent confrontation. The confrontation with both the SoC and UNTAC culminated in its boycott of the elections and violent armed attacks on the electoral process, including on UNTAC personnel. The PDK appears to have calculated that it was crucial to maintain control of its territories, civilian population, resources, politico-military apparatus and armed forces if it was to survive the transitional period and be in a position to negotiate a power-sharing arrangement after the departure of UNTAC. Its refusal to canton and disarm its forces led to the cancellation of the crucial Phase Two of the Agreements. The failure to disarm and demobilize Cambodian armed forces left the country with thousands of armed men, soldiers, demobilized soldiers and weapons all over Cambodia. Throughout the process, these have been an important source of human rights violations.

15. Political harassment, intimidation and violence occurred from September 1992 through to the May 1993 elections. Political repression throughout that period resulted in the killing and wounding of dozens of opposition party leaders, activists and members, as well as ordinary civilians. Most of the victims were members of the two main political rivals of the Cambodian People's Party (CPP), FUNCINPEC and BLDP.

### 3. The repatriation operation

16. From March 1992 to early 1993, some 370,000 displaced Cambodians were voluntarily repatriated by the United Nations High Commissioner for Refugees from border encampments in Thailand to Cambodia in an operation which has been described as one of the most successful endeavours of the United Nations during the transitional period. In terms of organization, coordination, logistics, security, voluntary choice of return and of place of destination, the operation was indeed a success. It was, however, subordinated to a strict political calendar which required that the repatriation be completed before the holding of the elections. Other serious shortcomings, including the difficulty of providing land to mostly rural returnees, will no doubt have serious social consequences.

### 4. Human rights under UNTAC's mandate

17. UNTAC's human rights mandate was the most extensive in the history of United Nations peace-keeping. It included a programme of human rights education, general human rights monitoring during the transitional period of existing administrative structures, the investigation of human rights complaints and the taking, where appropriate, of corrective action. Efforts to promote and protect human rights in Cambodia were linked to UNTAC's primary role to hold free and fair elections and to oversee a transition to a democratic government, and thus centred on election-related political violence and restrictions on political freedoms.

18. At the time of UNTAC's arrival the fundamental justice issue was the extreme weakness of the legal and judicial systems. The Human Rights Component undertook to monitor the institutions linked directly to the protection of human rights, such as the courts and the legal system, the police and the prisons. The judiciary was not independent, courts were subjected to direction by the executive (Ministry of Justice, Council of Ministers, local political and administrative authorities) and to pressure by the police and the Ministry of National Security. Access to defence counsel was virtually non-existent and there was no properly functioning forum for appeal. In addition, under-staffing, lack of adequate resources, disfunction due to poor qualifications and organization, and often also corruption, hampered the work of most courts, resulting in the prolonged detention of suspects without trial.

19. As a step towards strengthening the independence of the judiciary, the SNC adopted in September 1992 a Transitional Criminal Law. However, no real attempt was made by Cambodian authorities to implement its provisions, and courts remained largely subject to executive interference. Attempts by the Component to establish a court monitoring programme met with mixed results.

20. The Component sought to draw the attention of the Cambodian authorities, as well as Cambodian and international human rights organizations, to the problems in the legal system. Two international symposiums on Human Rights in Cambodia discussed, among other things, the need to rehabilitate the judicial system. The Component also organized several training courses for judges.

21. No legal system existed outside the territories controlled by the State of Cambodia. In FUNCINPEC, KPNLF or PDK zones prevailed either an almost total state of lawlessness and rule of the arbitrary (FUNCINPEC and KPNLF) or an informal system of politico-martial law (PDK). Local authorities, most of the time the military, determined the guilt of a person without any formal procedure and dispensed summary justice. Summary executions were reported for minor offences, as well as for robbery, rape or murder in KPNLF and FUNCINPEC zones. Similar serious offences frequently committed by members of the armed forces were reportedly almost never punished. In PDK zones, despite the absence of any legal system, generally good security conditions prevailed. Serious offences, such as adultery, rape, selling of one's weapon and treason were often punished by execution while lesser offenders were subjected to "re-education", often combined with forced labour.

22. The adherence of Cambodia to international human rights instruments, as provided for in the Peace Agreements, provided UNTAC, and notably the Human Rights Component, with a useful legal framework to carry out its functions.

23. Prior to the establishment of UNTAC, Cambodia was party to the Convention on the Prevention and Punishment of the Crime of Genocide and the International Convention on the Elimination of All Forms of Racial Discrimination. The SNC signed the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights on 20 April 1992, and acceded on 22 September 1992 to the following international human rights instruments: the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Rights of the Child and the Convention relating to the Status of Refugees and its Protocol.

24. Conscious that an effective protection and promotion of human rights in Cambodia required the reform of official and popular attitudes, as well as the provision of technical and other assistance and training, to restore "good governance", the Component undertook a broad range of educational activities in the formal and informal sectors. It worked through schools and universities and organized training courses targeted at particular groups in society such as administrative officials, police, teachers, judges, political party officials, health professionals, members of local human rights groups and public defenders. Information campaigns on human rights were also conducted through radio and television. Human rights training projects supported by the Component were implemented by local human rights organizations and others were developed.

25. When UNTAC was established, Cambodian society was lacking in the basic institutions and structures upon which the safeguarding of fundamental human rights depends: an independent judiciary, an effective non-political administration, a professional police and army, a free press, viable State institutions capable of providing basic social services, a broadly educated professional class, and indigenous human rights and other non-governmental organizations able and willing to promote and defend popular interests.

26. While the new Constitution would provide a framework for future human rights protection, it was felt that the successful enforcement or implementation of constitutional safeguards and provisions related to

individual rights, freedoms and entitlements depended upon the rebuilding or strengthening of many basic institutions of government and of the emerging civil society. In this area, the Human Rights Component was active on three broad fronts: encouraging the development of indigenous NGOs; working with the existing institutions to begin rebuilding Cambodia's legal and penal system; encouraging and facilitating the involvement of international and regional NGOs in all areas of human rights activities in Cambodia in the post-transitional period.

27. These efforts were encouraged by the United Nations Commission on Human Rights which in February 1993 authorized the Centre for Human Rights to become operationally present in Cambodia following the end of UNTAC's mandate. The Centre for Human Rights would continue many of the activities of the Component, particularly in the area of education. The Commission also requested the Secretary-General to appoint a Special Representative for human rights in Cambodia to maintain contact with the future government and people of Cambodia and report to the Commission and to the General Assembly (see above, Introduction).

28. In addition to scattered cease-fire violations, political violence plagued the initial phase of the transitional period, from November 1991 to March 1992, which had been welcomed by Cambodians with enthusiasm and high expectations. Despite the new freedoms - of expression, press, association - proclaimed by the CPP 5/, violent suppression of mostly peaceful demonstrations and a series of political assassinations of several known reformist figures for exercising the newly-proclaimed freedoms provoked the return of fear.

29. The establishment of UNTAC opened a second phase which saw an overall decrease in political violence and a related easing of political and social tension. The lull lasted until September 1992, when newly formed opposition parties began to organize in SoC-controlled zones, in Phnom Penh and the provinces. This surge in political activity disquieted SoC authorities who attempted to keep it under control. This initiated a new phase of political violence which continued through June 1993. It is in this context that the UNTAC Human Rights Component was established and began operating.

### 5. UNTAC investigation of human rights violations

30. The Human Rights Component conducted over 1,300 investigations into allegations of abuses of civil and political rights, notably politically or ethnically motivated killings, arrests, abductions, as well as patterns of violations, such as harassment and intimidation by local police, military or administrative authorities against political parties. However, Cambodia's extremely weak institutions of law and order and its past history of repressive practices and the exercise of arbitrary authority made it difficult for the Human Rights Component to maintain a clear distinction between "monitoring" and actual institutional correction or reform.

31. The pattern of complaints of politically motivated violence by the SoC changed several times during the duration of the mission, reflecting the political situation. The period from March to November 1992 was characterized by relatively low levels of political violence. The most common complaints

were of harassment and intimidation of opposition political parties ranging from arrest, imprisonment, dismissal of employment for membership in an opposition party, to threats of violence against opposition parties for engaging in political activity in the provinces. Several cases of political assassinations of party members were, however, alleged by BLDP representatives.

32. By November the incidence of serious human rights violations had increased markedly and reports of attacks on political party offices and members became a regular occurrence. The period from November 1992 to January 1993 saw a high level of politically motivated violence, particularly in Battambang and Kompong Cham. UNTAC investigations confirmed the death or injury of 96 FUNCINPEC and BLDP members in apparently politically motivated attacks. These investigations established the responsibility of the CPAF and SoC police in most of them.

33. By late January 1993 a diminishing in the level of violence was observed. This was possibly related to Prince Sihanouk's call for an end of the violence and his threat not to return to Cambodia until violence ceased. Upon the proposal of the Component, UNTAC established a Special Prosecutor's Office to prosecute perpetrators of serious human rights abuses. UNTAC military and police patrols were deployed to guard opposition political party offices. Attacks on political parties continued but their frequency decreased.

34. By March 1993 the opposition political parties began again to step up their campaign activities in preparation for the elections. But despite repeated appeals by the Special Representative of the Secretary-General and discussions between UNTAC and the SoC authorities, politically motivated violence increased markedly from the middle of March. From then on to the elections, UNTAC investigators confirmed that politically motivated attacks left 114 FUNCINPEC and BLDP members dead or injured and established that many of these attacks were attributable to SoC security personnel. A number of CPP officials were also killed in politically motivated violence.

35. Attacks against UNTAC increased from December 1992 to May 1993. They resulted in the death of 18 and injuries to 67 personnel. A further 43 UNTAC staff were abducted or detained for various periods of time. Many of these attacks could be attributed to the NADK. The Component viewed attacks by the NADK as politically motivated in that their objectives were to disrupt the electoral process, to further their campaign of linking UNTAC to the alleged "Vietnamese aggressors" and "their puppets" in the SoC, and to make UNTAC appear weak in the eyes of the Cambodian people.

36. Throughout the transitional period the NADK campaign against Vietnamese as well as Cambodians of Vietnamese origin continued. In a series of attacks from July 1992 to August 1993, 116 Cambodians of Vietnamese origin were killed and another 87 were injured, according to UNTAC investigations. Another 11 Cambodians of Vietnamese origin were abducted by the NADK and their whereabouts remained unknown. PDK propaganda against the Vietnamese accused of silently continuing their "war of aggression and annexation" through the human colonization of Cambodia was echoed by other factions, and notably the BLDP, but also to some extent by FUNCINPEC. Violence against Cambodians of Vietnamese origin peaked in March and April 1993 and led to the exodus to

Viet Nam of at least 25,000 ethnic Vietnamese civilians, mostly fishing families from Cambodia, in the following weeks. Racial attacks continued after the elections with the abduction and killing of a group of Vietnamese fishermen in Sihanoukville (June 1993), and a series of attacks on fishing families who had returned to their former homes on the Tonle Sap (July and August 1993). These attacks resulted in the death of 18 Vietnamese Cambodians, injuries to one, and the abduction of another 14.

37. From the commencement of the UNTAC mission, problems of denial of access to the areas controlled by the PDK caused major difficulties for the monitoring and investigation of human rights matters in those areas. This situation worsened in June 1992 when NADK refused to take part in the disarmament and cantonment process set out in the Paris Agreements. NADK moved to attacks on SoC and ethnic Vietnamese Cambodians and then to direct attacks on UNTAC personnel. Throughout the transitional period, NADK continued to attack its traditional targets with a view to bringing about the dissolution of SoC State power at the village and commune levels. Targets were village and commune officials, militia, police and military. Such attacks gathered momentum during the electoral campaign as PDK radio broadcasts were becoming more strident against the Vietnamese, SoC and UNTAC who were accused of colluding against the PDK to annex Cambodia. According to UNTAC investigations, these attacks resulted in 216 confirmed cases of killings by the NADK, 342 confirmed injuries and 181 confirmed abductions.

38. Another major human rights concern during the transitional period was the incidence of attacks on civilian targets, particularly by NADK. UNTAC's reports confirmed that some 159 civilians were killed and 325 injured in such attacks. Of these, 84 were confirmed to have been killed and 226 injured by the NADK and another 40 killed and 27 injured in arbitrary violence perpetrated by SoC. A further 202 civilians were abducted, 181 of whom were abducted by suspected NADK soldiers, either for ransom or for forced labour as porters. Such attacks by NADK appeared to be aimed at intimidating local populations. Although robbery also appeared to be a motive in such incidents, the modus operandi of the attacks left little doubt that their prime objective was terror rather than robbery.

39. Other human rights violations reported and investigated by UNTAC included numerous incidents of apparently random or arbitrary violence by police or armed forces of the four Cambodian parties. Such incidents included the summary execution of prisoners such as NADK soldiers who voluntarily surrendered to the custody of SoC authorities, or of prisoners who were recaptured after attempting to escape from SoC prisons, or of NADK deserters captured by their former units.

40. In addition, general banditry and other common crimes resulting from the breakdown of law and order were a major problem throughout the transitional period. The failure to disarm the Cambodian factions meant that there were large numbers of heavily armed soldiers and jobless former soldiers of all factions, often unpaid for long periods of time, and tens of thousands of weapons throughout the countryside. Incidents of banditry and lawlessness, which frequently resulted in the killing or injuring of innocent civilians, were considered criminal activities outside the mandate and scope of the Human Rights Component. However, the Component viewed the refusal by competent

authorities to take judicial action against such criminal activities with a view to bringing those responsible to justice as a severe breach of the right of equality before the law and of the right to a judicial remedy against abuses.

41. SoC prisons were closely monitored, both for the physical conditions of the prisons and the treatment of prisoners themselves and the protection of the right to due process. Conditions in prisons remained poor and fell short of international standards, but improved considerably during the transitional period. The widespread use of shackling, both as punishment and as a routine security measure, and the frequent solitary confinement of detainees in small, dark, poorly ventilated cells for extended periods of time without access to physical exercise were greatly reduced as a result of the Component's monitoring and recommendations to the Ministry of National Security. Other forms of physical mistreatment of detainees, such as beatings or more severe forms of physical abuse, also occurred but on a smaller scale. Routine beatings of suspects upon arrest by the police, however, continued to be common.

42. After the signing of the Paris Agreements and during the period that followed, all known political prisoners were released. Repeated consultations by the Component with the Ministry of National Security resulted in the formation of a Prison Commission to review the cases of all prisoners detained in SoC prisons. Hundreds of other prisoners were released as a result, after it was found that they were either too young or too old, or that they had been detained without proper charge or trial for excessively long periods. The Component sought to ensure that due process was afforded in the determination of the charges against detainees. Despite these efforts, most prisoners continue to be held without trial, largely as a result of the inefficiencies of the judicial process. The work of the Component in this regard underlined the structural nature of the problem of Cambodia's prisons. Without a functioning legal system, the prisons were inevitably overcrowded and unhealthy. In the absence of effective supervision by the courts, few prisoners were released except through the payment of bribes to prison authorities.

43. In addition to the torture and execution of prisoners of war by both NADK and SoC forces, other cases of torture in the SoC prisons were investigated. The two most serious cases occurred in Battambang and Prey Veng. In Prey Veng, on 16 May 1993, seven prisoners who were recaptured after they had escaped were allegedly executed in the prison by the prison's Deputy Director. Others were allegedly beaten and severely tortured. A warrant was issued by the UNTAC Special Prosecutor for the arrest of the Deputy Director of the prison on multiple murder charges. He was arrested with the assistance of the local police and detained in the UNTAC jail.

44. Allegations of torture of prisoners in Battambang prison prompted an UNTAC investigation. It was alleged that the chief of the prison guards had, on several occasions, engaged in the torture of prisoners. Torture included the burning of parts of the body as well as beatings. He was arrested in July 1993 by UNTAC and detained in the UNTAC prison.

45. Despite improvements during the transitional period, ill-treatment of detainees in SoC prisons was commonplace. It often included the use of shackles, dark isolation cells and deprivation of food and water. Complaints of physical mistreatment of prisoners in the custody of CPAF and the SoC police were also common. They often included beatings as a punishment or to extract information, as well as summary execution, and in some cases both.

### 6. Failure to secure corrective action

46. The Paris Agreements provided that UNTAC should have the responsibility for corrective action, where appropriate, in cases of human rights violations. Within UNTAC the responsibility for proposing and recommending corrective action measures rested primarily with the Human Rights Component. The failure of the Agreements to specify appropriate measures meant that it was always open to the Cambodian parties to contest the authority of UNTAC in its attempts to remedy human rights violations.

47. The Component adopted, with varying degrees of success, different measures as its response to different human rights problems. Wherever possible it sought to persuade relevant Cambodian authorities to meet their responsibilities to maintain law and order in their respective territories, to investigate allegations of human rights abuses, and to arrest and prosecute those responsible. In cases of minor violations, UNTAC successfully sought redress with Cambodian authorities. In serious cases, however, and in cases where Cambodian authorities were not prepared to assist in resolving the problem, other forms of corrective actions were recommended. They included administrative sanctions, criminal prosecution through the Cambodian legal system, public condemnations and criminal prosecution by UNTAC.

48. It quickly became clear that the Cambodian parties were reluctant to take action against senior officials. They resisted UNTAC attempts to exert its control function to improve the human rights situation. In cases involving junior officials or less politically sensitive issues, SoC was more cooperative. Some recommendations for transfer of officials were acted upon. It appeared, however, that while SoC was prepared to transfer or even demote officials in some cases, the removal of officials for human rights violations was resisted firmly.

49. Against the background of the rapidly deteriorating human rights situation that threatened the environment in which elections were to be held, the Special Representative of the Secretary-General established in early January 1993 a Special Prosecutor's Office. He took that action because of the reluctance on the part of the Cambodian authorities to investigate allegations and prosecute offenders and UNTAC's failure to take corrective action against any official for human rights violations. The Special Prosecutor's Office was to consider recommendations for criminal prosecution of serious human rights violations, to conduct prosecutions in the appropriate courts of Cambodia and to appeal to higher courts where necessary and advisable by the Special Prosecutor.

50. Following the creation of this office, warrants were issued for 16 suspects, and four arrests, including three SoC officials and one NADK soldier, were made by UNTAC in Kampot, Kompong Chhnang, Battambang and Prey

Veng, respectively. As it was considered inappropriate for UNTAC to detain the four suspects in Cambodian prisons which did not meet international standards, and because prisoners might have been at risk in those prisons, it was decided to construct an UNTAC prison.

51. In the first two cases, the Special Prosecutor sought to bring charges against the accused in the Phnom Penh Municipal Court. Following the hearing of the first of these cases by the Court, the SoC Minister of Justice instructed the President of the Court that he was in error in hearing the case, and that should he continue to "violate the law", he would be "punished". As a result the judge declined to hear the Special Prosecutor's application in respect of the second prisoner. It became clear that such cases could not be brought before the courts. UNTAC was thus forced to realize that it was not possible to conduct trials with political overtones in the SoC courts. This led the Special Representative to issue a decision allowing UNTAC to detain suspects until a competent Cambodian court could be identified. However, no such court could be identified and no further matters were brought before SoC courts.

52. An Action Cell was established by the Special Representative in February 1993 to consider proposals for corrective action from all components, and to decide on the appropriate forms of corrective action and the most effective way of implementing them. However, attempts by UNTAC to secure the cooperation of Cambodian authorities in the implementation of recommended actions almost uniformly ended in failure.

53. The four UNTAC detainees, thus, continued to be held without trial until the termination of UNTAC's mandate on 31 September 1993. In the meantime, one of them died of sickness in UNTAC custody. The three others were transferred to Cambodian authorities for trial in Cambodian courts. At the time of writing of this report, one prisoner, the former Deputy Director of the Battambang prison, had been convicted and sentenced to one year in prison and to pay compensation to the victims' families. The other two cases were still in the process of investigation.

### 7. Political violence and the elections

54. The electoral campaign was marred by political violence throughout the country, including assassinations of perceived political opponents and attacks on opposition party offices by SoC security forces; attacks by the NADK on civilians, including those of ethnic Vietnamese descent; armed attacks against UNTAC personnel; and constant harassment and intimidation by local authorities aimed at manipulating the outcome of the elections. The PDK campaigned for a boycott of the elections which it attempted to disrupt through armed attacks. As for the CPP, it sought, contrary to the provisions of the Paris Agreements, to mobilize all the resources of the SoC machinery under its control (administration, police, military) to maximize its chances of an electoral victory. An atmosphere of fear pervaded the countryside and popular confidence in the electoral process appeared to be seriously eroding.

55. Continuous violations were not, however, viewed as serious enough to warrant the cancellation of the elections. Rather, the elections were seen as essential for the interests of long-term progress in the protection of human

rights. It was expected that the election of a Constituent Assembly, leading to a liberal democratic constitution with important human rights safeguards, would provide the best possible framework for continued activities to advance promotion and protection of basic rights and freedoms.

56. The actual week of the elections (23-28 May) saw a net decrease in political violence. This was in part due to extraordinary efforts on the part of UNCTAC to ensure the exercise of political freedom, as well as the deployment throughout the country of SoC armed forces to protect polling stations. It was also later found that instructions had been issued by the NADK High Command to suspend attacks, reportedly after they realized that they did not have the capability to prevent the elections from taking place. Despite the violence of the preceding weeks, the turnout was massive as 89.6 per cent of registered voters flocked to polling stations in an often festive atmosphere.

## 8. Political developments since the elections

57. The elections resulted in the opposition FUNCINPEC party narrowly emerging as the overall winner, with the CPP coming in second and the BLDP third. A fourth smaller party scored one seat in the Constituent Assembly. Following a brief disturbance in early June initiated by the CPP in an attempt to contest the results of the elections and pressure FUNCINPEC to enter an alliance with it, an Interim Joint Administration - the Provisional National Government of Cambodia - was formed for the remainder of the transitional period with the four political parties represented in the Assembly. Power-sharing within the coalition reflected the principle of 45 per cent for FUNCINPEC, 45 per cent for CPP and 10 per cent for BLDP. The coalition was headed by two co-Prime Ministers and two co-Ministers were appointed in each ministry. The monarchy was restored in August 1993 with Prince Norodom Sihanouk proclaimed King of Cambodia.

58. The Constitution of the Kingdom of Cambodia was adopted by the Constituent Assembly on 21 September 1993. It provides for a liberal democracy, a market economy and a constitutional monarchy. Important elements of the Constitution are the provisions for pluralism and the establishment of a framework of fundamental human rights, the separation of powers and the independence of the judiciary.

59. Article 31 of the Constitution recognizes the human rights stipulated in the Charter of the United Nations, the Universal Declaration of Human Rights and other human rights conventions. While the recognition of human rights in the Constitution is laudable, there are serious deficiencies. The most serious is the limitation by the Constitution to Khmer citizens of some of the fundamental rights stipulated in the two International Covenants on Human Rights. This formulation removes all non-citizens from the protective umbrella of the Constitution. This definition may also exclude persons belonging to other ethnic or linguistic groups (Vietnamese, Chinese, Cham-muslims, etc.). In the absence of a law on immigration and citizenship, this creates uncertainties about the rights individuals are entitled to.

60. The Constitution does not preclude the retroactive application of criminal laws. Neither does the Constitution provide for aggrieved individuals to have their rights enforced through the courts. It should be noted that annex 5 to the Paris Peace Agreements required the inclusion of such an enforcement provision in the Constitution, which is essential for the effective enjoyment of human rights. This omission is compounded by the absence of administrative laws and procedures.

61. The acceptance of the principles of separation of powers and independence of the judiciary in articles 51 and 109 is commendable. If implemented, this will go a long way in the building of a society based on rule of law. While the principles have been recognized, provisions that will guarantee their realization are lacking. For instance, the judiciary is not guaranteed either salary or tenure and the grounds for the removal of judicial officers have not been specified. Administrative practices and a legal structure to reinforce them have not been devised yet. Given the collapse of institutions and erosion of attitudes in the recent history of Cambodia, such measures are imperative to realize the ideals specified in the Constitution.

62. Some provisions of the Constitution are yet to be implemented. For instance, the Constitutional Council, envisaged in chapter 10, and the Supreme Council of Magistracy, envisaged in chapter 9, have not been established yet. This delay has prevented the reorganization of the judiciary, particularly with regard to appointment of judicial officers and the establishment of the Appeal Court and has given rise to confusions about the procedures to be followed in the enactment of laws. These problems need to be addressed urgently.

63. Some other provisions in the Constitution could also lead to political problems in implementation. For instance, in article 2 the borders of Cambodia are defined as those internationally recognized between 1963 and 1969. This may, in practice, give rise to problems with neighbouring countries, and must be implemented in accordance with the relevant provisions of the Charter of the United Nations to minimize the possibility of any dispute.

64. Following the adoption of the Constitution, consultations on power-sharing continued for a month between the King and the three main political parties. On 29 October 1993 a cabinet led by a first (Prince Ranariddh, FUNCINPEC) and a second (Mr. Hun Sen, CPP) Prime Minister was adopted by the National Assembly, together with the new cabinet's political platform. In the cabinet, the FUNCINPEC party controls the Office of the Prime Minister, as well as the Foreign Affairs, Finance, Industry, Education, Rural Development, Tourism, Public Services, Transport and Religious Affairs portfolios. The CPP retained control of all other ministries, including Defence and National Security. The Ministry of Information and the Secretariat for Women's Affairs went to the BLDP.

65. Reportedly, the new Government's priorities are national reconciliation between all Cambodian factions, the improvement of public security, the restoration of basic infrastructures, the stabilization and development of the

economy, the reduction of inflation and the cutting of administrative expenses, improvements in the taxation system, and the development of educational and professional training.

66. Since its formation, the Royal National Government of Cambodia has undertaken a series of reforms aimed at reorganizing the government administration, particularly in the economic and financial sector, the judiciary, the armed forces and the police; it has held talks with the insurgent PDK with a view to negotiating a peaceful settlement; it has normalized its relations with its regional neighbours, including China, Thailand, Viet Nam, the Laos People's Democratic Republic, and has initiated talks with Viet Nam and Thailand with a view to resolving border disputes.

67. Little progress has so far been achieved in the resolution of the armed conflict which continues to pit the PDK against the Central Government. However, now, the PDK's former allies, FUNCINPEC and KPNLF, are on the opposite side. Certain negotiations and consultations, on the initiative of King Sihanouk, have taken place. His Majesty put forward in November 1993 a five-point proposal in an attempt to break the deadlock. However, the contending parties appear to be as far apart as ever. Meanwhile, the dry-season offensive has been launched, taking its toll on the people and on the country.

68. Since the offensive launched in August 1993 by the Government against NADK positions in the central and western provinces, followed by an amnesty appeal by the two co-Prime Ministers, some 800 to 1,000 NADK troops and officers have been reintegrated into the nation. Over 700 of them have been offered positions in the government army according to their ranks, and the others have returned to their homes. Initially successful, this amnesty programme has, however, been marred by reported corruption involving high-ranking government officials. Ill-treatment of defectors in a government regroupment centre has occurred. There have also been reports of arbitrary killing and attempted killing of several defectors after they have surrendered.

69. The legal developments that have occurred must be understood within the historical context of Cambodia. When the country became independent, the French legal system which had been imposed during the period when Cambodia was a Protectorate of the French Republic was retained. The civil and criminal codes were based on the French legal system. This situation was completely changed in 1975, with the coming to power of the PDK. That regime abolished all laws and institutions such as the courts. There was no effort to put an alternative system in place and the rights of the people were determined by arbitrary administrative decisions. Most of the intellectuals, including those with legal training, either died, became rural labourers or escaped to other countries.

70. When the PRK regime came to power in 1979, the country had been in a legal vacuum for at least four years, with some parts living under conditions of civil war and social disintegration since 1970. Thus, in 1979, there were very few, if any, persons with legal training, no law enforcement personnel trained in the tradition of rule of law, no documents or other materials, and a low level, if not a complete absence, of belief in rule of law.

Reinstitution of old legal texts was not attempted due to the political line of the PRPK regime and the traumatic aftermath of the regime of Democratic Kampuchea, in which detailed legal codes would have been useless as guides of conduct.

71. The PRK regime attempted to build a legal system modelled on those of friendly countries, in which the nine-party structure exercised control over the legal and judicial process. The first law passed by the PRK regime, Decree Law No. 01, dated 15 May 1980, provided for the establishment of Revolutionary People's Courts in all provinces. Subsequent attempts were made to reorganize the judiciary and the legal system from 1982 onwards. Examples include a law on arrest and detention passed in 1986, a law on criminal procedure passed in 1989, laws on land and marriage passed in 1989 and a law on demonstrations passed in 1991.

72. When UNTAC began functioning in 1992, the existing legal and institutional structure differed little from what it had been during the past decade. There were inadequate or no legal texts on civil law including contracts and property, criminal law and procedure, rules of court, evidence, labour law and immigration law. Institutions such as the police and courts were not fully organized or properly functioning. The rule of the arbitrary prevailed all too often. The people had little faith in the ability of institutions to dispense honest and impartial justice.

73. UNTAC's mandate in the area of the administration of justice was implemented at three levels: first, in the development of legal texts and standards; second, in strengthening the judiciary and third, in reforming the police and prison systems. UNTAC achieved varying levels of success at all three levels with the SNC and the SoC. Major initiatives included:

(a) The Transitional Provisions which were passed by the SNC on 10 September 1992. These provisions attempted to reorganize the court system and criminal procedure and also included a list of offences;

(b) The Code of Criminal Procedure proclaimed by the SoC on 8 March 1993; and

(c) Directives from the relevant ministries concerning the judiciary police, cooperation between judiciary and police and the prevention of the use of shackles in prisons.

74. After the 1993 elections, nine Parliamentary Commissions having jurisdiction over different areas have been established. Each Commission consists of seven members from the three major political parties in the coalition Government. One of them is the Human Rights and Reception of Complaints Commission. Created mainly to deal with the deluge of complaints to the Assembly, this Commission has started looking into many human rights issues and the drafting of laws on human rights. Another is the Commission on Legislation, which will scrutinize bills and laws for conformity with the Constitution and conflict of laws. Several legislative initiatives are, however, on the agenda including:

(a) Organic laws on the establishment of the Constitutional Council and the Supreme Council of Magistracy;

(b) A law on the press;

(c) A law on immigration;

(d) A law on the organization of the legal profession;

(e) A law on the organization of the judiciary;

(f) A law on demonstrations; and

(g) A penal code and a code of criminal procedure.

75. Politically motivated violence directed against opposition parties almost completely disappeared after the elections and the formation of the new Government. Human rights violations in Cambodia have become the result of the structural dysfunctoning of Cambodian society after two decades of war and repressive government practices. Structural weaknesses that need to be corrected include the general dysfunctioning of the government administration, the excessive powers the security organs continue to enjoy, the absence of a professional police and army, corruption, and a fundamentally weak and misfunctioning judiciary.

76. However, should unresolved contradictions between the members of the still fragile coalition Government arise, renewed politically motivated violence could again become an occurrence. Moreover, popular discontent in the face of the breakdown of law and order, growing unemployment, economic difficulties, continued arbitrary practices by government officials, as well as corruption, could lead to social unrest and repressive responses by the Government. Meanwhile, the continuing, although low-intensity, conflict with the insurgent NADK remains the most serious source of human rights violations. Land-mines continue to be laid by all sides, 6/ and insecurity in several provinces could provide grounds for the Government to curtail essential freedoms in the name of national security.

77. Since October 1993, a number of complaints of human rights violations have been reported including the physical ill-treatment of NADK defectors in a regroupment centre, as well as the killing and attempted killing of several others after surrender. They also include the detention of a likely prisoner of conscience; frequent allegations, often supported by physical evidence, of beatings of suspects in police custody; severe physical ill-treatment and killings of civilians by security personnel for extortion; reported abductions of young female villagers by field military commanders to become concubines; the abduction and suspected sale of young female children by prostitution networks; frequent unlawful house searches, arrests and detention; land disputes involving corruption and abuses of power by local government officials; and unlawful evictions.

78. The results of the elections illustrated a profound desire for change which reverberated across Cambodian society. The political translation of this popular will in a coalition Government has raised expectations and

strengthened confidence in the possibility of change. The desire and will for change exist among the population, large sectors of the government administration and the Government. It is taking place in the context of an unprecedented opening of Cambodian society during and since the departure of UNTAC, which has allowed the emergence of new spaces of freedom for individual and social initiative. The slow and still fragile emergence of the civil society can be observed in the flourishing of a relatively free press, in the continuing development of some 27 grass-roots-level NGOs and in the new confidence displayed by Cambodian citizens, often from remote villages, who travel to the capital to speak out and demonstrate for their rights. This was unimaginable a year ago. An eloquent illustration of the birth (or rebirth) of these social attitudes is given by the deluge of complaints, often relating to official abuse, received daily by the Human Rights Commission of the National Assembly. A similar desire for change is also widely expressed by government employees in many sectors who wish to reform existing practices and reorganize their own sphere of activity with a view to making it more efficient and also to be proud of what they are doing.

79. An unprecedented wind of change is blowing in Cambodia and it is essential that it is encouraged through concrete assistance in all domains.

## II. FIRST MISSION OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL FOR HUMAN RIGHTS TO CAMBODIA

80. Shortly after his appointment, the Special Representative held consultations in Geneva on 30 November 1993 with staff of the Centre for Human Rights, and a programme of activities for 1994 was agreed upon. His first mission to Cambodia was planned for the period 21 to 28 January 1994. (See annex I for the programme of the first mission.)

81. In connection with this mission, the Special Representative had, in Geneva, on 13 January 1994, an introductory meeting with representatives of the Member States which had co-sponsored Commission on Human Rights resolution 1993/6. He also met representatives of a number of United Nations bodies and agencies, as well as international organizations having offices or programmes in Cambodia, to exchange information about their respective activities and to ensure inter-agency coordination in programmes aiming at the promotion and protection of human rights in Cambodia.

82. The Special Representative also consulted, both in Geneva and Paris, representatives of international and non-governmental organizations which have been following human rights developments in Cambodia before, during and after the transitional period and are implementing, and/or planning to implement, activities in the country. During his visit to Paris, the Special Representative met representatives of the French Government.

83. In Cambodia, the Special Representative met the two Prime Ministers, the Deputy Prime Minister and Minister of Foreign Affairs, the Ministers and the Vice-Minister of the Interior, the Minister of Justice, the Minister of Defence, the Minister of Education and the Minister of Information, to discuss his mission and mandate, as well as the human rights situation in Cambodia.

84. The Special Representative met members of the Human Rights Commission of the National Assembly and the Chairman of the Phnom Penh Municipal Court. He also visited the court and a prison in Battambang province and had discussions with officials and members of non-governmental organizations there. The Special Representative paid a visit to the Faculty of Law and Economics of Phnom Penh University and toured King Sihanouk Hospital in Phnom Penh.

85. The Special Representative met and consulted with staff of the Cambodia Office of the United Nations Centre for Human Rights on a number of occasions during his mission. He was briefed by Cambodian human rights organizations as a group, and met some of their leaders on an individual basis. He also had discussions with the Cambodian Defenders' Association, the Vietnamese Association and several international organizations working in the area of human rights.

86. During his mission, a meeting was held with representatives of United Nations agencies and international organizations working in Cambodia to discuss the current human rights situation and their activities in this area. The Special Representative also met formally and informally with representatives of the diplomatic community.

87. On the last evening of his mission in Cambodia, the Special Representative gave a news conference which was well attended by journalists and members of the public.

88. In Bangkok, the Special Representative had meetings with the Deputy Director of the Department of International Organizations and the Director of the Asia and Pacific Department of the Ministry of Foreign Affairs of the Kingdom of Thailand.

## III. ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN THE CONTEXT OF RECONSTRUCTION OF THE COUNTRY

### A. Economic and social situation

89. The economic and social situation of Cambodia reflects the damage caused by decades of war, poor health systems, poor communication systems, a run-down educational system and poverty. 7/ In 1992 Cambodia was ranked by the United Nations Development Programme as 136th of 160 countries in terms of "human development". Life expectancy at birth is below 50 years (compared with 62.6 for the region of South-East Asia and Oceania). The infant mortality rate of 120 per 1,000 is more than double that of the region. Annual maternal mortality is estimated at 9 per 1,000. The annual birth rate is 40 per 1,000, perhaps the highest in Asia. More than one third of the population is below 15 years of age. Access to safe water - 12 per cent in rural areas and 20 per cent in urban areas - is very low. Average number of years of schooling is two for people aged 25 and above, compared with 4.4 in the region. There is an absence of qualified personnel across the spectrum to manage public services or engage in activities linked with the emergence of the market economy. 8/

90. As in all other areas, economic and social activities take place in an operating environment bereft of laws, regulatory frameworks and systems of control. This can be seen in the almost uncontrolled free market activity and even in such problems as traffic control and the rapid increase in prostitution. Rebuilding infrastructures will be a long, costly and complicated process. 9/

91. During the past two years, Cambodia has had to resettle a large number of people, some 370,000 refugees from the Thai border camps as well as 165,000 internally displaced persons. 10/ This massive movement of people has been made difficult by the presence of millions of land-mines scattered throughout the country, primitive transportation systems, banditry and continued warfare. There is also a rapid urbanization process accompanying these movements due to the land-mines, warfare and persistent banditry, the perceived greater availability of urban employment and the nature of the returnee population many of whom are accustomed to the semi-urban life of the camps.

92. Cambodian society is characterized by a high proportion of females, street children and physically disabled. Approximately 65 per cent of the adult population is female. Land-mine injuries have left Cambodia with the highest proportion of physically disabled people in the world. There are approximately 188,000 orphans living outside orphanages. 11/ Most farm labour is performed by females. The shortage of male labour may also lead to a reliance upon child labour with its accompanying impact upon school attendance.

93. The devastation of the last 20 years has destroyed much of the country's economic and social infrastructure. GDP per capita is approximately US$ 160 per annum which is less than half of what it was in 1969 at current prices.

94. Agriculture employs about 80 to 85 per cent of the workforce and constitutes about half the GDP. Despite this emphasis upon agriculture the country has moved from being a net exporter of rice in the late 1960s to a net importer. Cambodia is likely to remain an agricultural economy based upon small subsistence farming into the foreseeable future.

95. Cambodia's main exports are timber and rubber. The major imports are fuel, construction material, beer, tobacco and consumer goods. The exchange rate has been unsteady and has weakened in the period from 1988 to October 1993. During this period the riel depreciated from 142 riels to 2,700 riels per United States dollar. The riel is now stable at around 2,500 per dollar. The riel is not a fully convertible currency.

96. Generally, economic reform has progressed, but haphazardly. It is expected that high levels of external budget support will be necessary to sustain the public sector and provide basic government services. International assistance to support Cambodia's rehabilitation was governed by the Declaration on the Rehabilitation and Reconstruction of Cambodia, signed as part of the Paris Agreements. The Declaration proposed that Cambodia's immediate needs be addressed during a "rehabilitation phase" that would also serve for the long-term reconstruction and rehabilitation of the country. The Declaration directed that particular attention be given to food security, health, housing, training, education, transportation, and the reconstruction of Cambodia's infrastructure and public utilities. The Secretary-General launched a general appeal in April 1992 for funds to meet Cambodia's immediate needs and for its national rehabilitation.

97. With regard to the social sector, the appeal called for the provision of US$ 75 million for health, water and sanitation, education and training. A ministerial conference on Cambodia's rehabilitation and reconstruction held in June 1992 pledged US$ 880 billion in aid over the 1992-1994 period. Further pledges were made at a meeting of the International Committee on the Reconstruction of Cambodia in September 1993 bringing the total to US$ 998 million of which approximately US$ 300 million has been delivered, mainly towards the farm economy. Unfortunately disbursements have lagged and it may be that this amount will not be expended in the projected period. Further, it is still unclear how such spending is contributing to a coherent programme of rehabilitation as defined by the Declaration and the Appeal. 12/

98. Cambodia's recent economic growth has been assisted by the establishment of a large number of international agencies and external aid as part of the peace process. In 1992 UNTAC spending in Cambodia amounted to US$ 200 million, and spending in 1993 was probably in the same range. However, the sudden injection of these funds and then their withdrawal distorted the economy. In particular, inflation related to the competition for housing and skilled staff had a great impact. Investment and labour were diverted away from essential production towards providing tertiary services to foreigners. 13/

99. The Cambodian Constitution states in article 56 that, "The Kingdom of Cambodia shall adopt the market economic system. The preparation and process of this economic system shall be determined by law". The major impetus

towards a market economy was the introduction, beginning in 1989, of private ownership of agriculture which has proceeded very quickly and evenly across the country. Enterprise reform, according to a World Bank report of June 1992, has been uneven and constrained by the need for Government to extract as much revenue as possible from the enterprises. 14/ In essence, State-sector production has collapsed and it is difficult to predict when it will be revived. Further, government activity is distorted by the amount expended on defence (running at between 40 to 50 per cent of total government expenditure) and the reliance upon customs revenue which accounts for approximately 70 per cent of government income.

100. The restoration of basic infrastructure and utilities, particularly in the areas of transportation, telecommunications, electricity, fuel and water supply, is a prerequisite for the further economic development of Cambodia. Up to 6,000 kilometres of roads require total reconstruction or urgent repair. The electricity supply is one of the worst in the world and most rural areas have no service at all. The urban sewage and water systems are dilapidated and unable to cope with present demands.

101. UNDP has a large ongoing programme, which to January 1994 totalled US$ 70 million. Their large range of technical assistance projects are grouped in three main areas: (i) reintegration and rural development; (ii) rehabilitation of essential infrastructure; and (iii) advisory services, data collection and training. UNDP is developing a strategy for civil service reform and a programme on rehabilitation and development providing facilitators and coordinators across 11 working groups, each working on developing government policy.

## B. Work and trade unions

102. Articles 36 and 37 of the Cambodian Constitution guarantee the rights to form and be members of trade unions, to strike and engage in non-violent demonstration. There is at present no organized trade union activity in Cambodia. The Government-controlled trade union organizations established under the previous regime have collapsed. There is no system of arbitration and conciliation to settle industrial relations disputes. There are no laws or regulations governing such essential elements of an industrial relations regime as minimum wage, working hours and health and safety.

103. Cambodia has been a member of the ILO since 1969 and is a party to the following ILO Conventions: Night Work (Women) (No. 4), Night Work of Young Persons (No. 6), White Lead (Painting) (No. 13), Forced Labour (No. 29) and Employment Policy (No. 122).

104. Until 1993 there had been no report under these Conventions for 15 years. The Committee of Experts on the Application of Conventions and Recommendations expressed the hope at its 1993 session that the Government of Cambodia would resume its reporting. The ILO reports that the Ministry of Labour at present does not have the capacity to make such reports and it is presently assisting the Government by providing training and advisory services. The Cambodia office of the United Nations Centre for Human Rights and the ILO are consulting closely on developments in this area.

## C. Health

105. Article 72 of the Cambodian Constitution states, "People's health will be guaranteed. The State shall give full consideration to disease prevention and medical treatment. Poor people shall receive medical consultation in public hospitals, infirmaries and maternities free of charge. The State shall set up infirmaries and maternities in remote areas".

106. The incidence of poverty-linked and mosquito-borne diseases is very high in Cambodia. There are approximately 500,000 malaria cases each year and the tuberculosis rate is the highest in the world. Infections related to the poor quality of the water supply account for many infant deaths. Undernourishment is estimated at around 10 per cent in Phnom Penh and 20 per cent in the provinces.

107. The World Health Organization (WHO) has been providing assistance to the National Malaria Centre and Control Programme since 1991. According to a report by the Ministry of Health of September 1992, the capacity to diagnose and treat patients, as well as to limit increases in drug resistance and further spread of the disease, have improved and continue to improve. 15/ WHO is providing a specialist tuberculosis adviser to work directly with the Minister of Health and the National Anti-Tuberculosis Centre, to assist in the implementation of a control programme. WHO is also providing assistance to control diarrhoeal diseases, dengue fever and to improve maternal and child health.

108. With infant and child mortality rates the highest in South-East Asia and maternal morbidity one of the highest in the world, maternal and child health programmes require urgent strengthening. UNICEF has been providing support to the Ministry of Health's programmes in this area. WHO has recently developed a National Maternal and Child Health Plan which should assist in this situation.

109. HIV/AIDS cases appear to be spreading rapidly. The first testing for HIV was undertaken in 1991 among blood donors. Three, or about 0.08 per cent, of the total blood donors were found to be HIV positive compared with 30 cases or 0.8 per cent of donors in 1992. WHO estimates that 1,000 to 2,000 Cambodians may be HIV positive. There is now a National AIDS Committee and a National AIDS Plan. Cigarette smoking appears to be at levels lower than in other countries in the region. One unfortunate result of the opening up of the Cambodian economy will be the access to it of higher levels of cigarette use promotion. There is evidence of a concerted campaign to discourage cigarette use.

110. The health service systems in Cambodia require urgent restructuring and further resourcing. Although there is a large Ministry of Health workforce of 22,000, salaries are insufficient for them to support themselves. Many of them offer private health services to earn extra income. There is an urgent need for training resources and facilities. Many of the health-care facilities are in a very poor state, lack drugs, supplies and equipment and are usually used only as a last resort by patients. These problems are particularly acute at the district and commune level, where, for example, patients usually have to purchase their own medication from the private

sector. The quality of pharmaceuticals is largely uncontrolled. The provinces have autonomously provided health services and funded them through their own budgets at a very low level. WHO and UNDP are developing a strategy with the Ministry of Health so that the latter will assume more centralized policy and strategic leadership of the system.

111. There are many international organizations working in the health area, including WHO, UNICEF, UNHCR, UNDP, WFP, ICRC and IFRC. There are also around 100 international non-governmental organizations involved in the health sector. The Human Rights Component of UNTAC funded an innovative training programme in human rights for health workers which was conducted by the American Refugee Committee. This project has continued under the auspices of the Cambodia office of the United Nations Centre for Human Rights, concluding only recently.

## D. **Education**

112. Chapter 6 of the Cambodian Constitution defines the "people's right to quality education at all levels" and the role of the State in the establishment of "a comprehensive and universal educational system throughout the country". Educational freedom is guaranteed as is educational equality "so that all citizens have equal opportunity to earn a living". Primary and secondary schooling are to be provided free of charge, and nine years of education are compulsory. Private schooling is allowed and Buddhist education promoted, subject to State control.

113. Cambodia's financial situation makes the realization of these constitutional objectives unlikely in the short run. The Ministry of Education's share of total government spending is below 6 per cent, which is one of the lowest in the world. However, the decentralized nature of the Cambodian education system means that most public spending is done through transfers from the central budget to local authorities. It is the provinces and districts which have the most responsibility for the provision of education. In total these budgets amount to 13.8 per cent of public spending. 16/ Per capita expenditure on education therefore is approximately US$ 2.30. The Cambodian authorities have increasingly relied upon privatization of costs and services and foreign aid.

114. Despite significant progress in the 1980s, the education system is of very low quality and suffers from high repetition and drop-out rates. 17/ Cambodian children begin schooling at age six. They receive five years of primary education. However, according to UNICEF the average child spends 10 years in primary school having to repeat failed grades. Lower and higher secondary education are three years' duration each. Enrolment rates in primary education have begun to increase rapidly. At all levels there is severe pressure on existing facilities and teaching staff. The majority of teaching staff are undertrained. UNICEF reports that the average teacher has only six years of education. Existing primary schools are extremely overcrowded. Some first grade classes have over 100 students. Double shifting is common. In the primary system there is a severe shortage of teachers but the output of trained teachers has decreased. To maintain even present standards in the primary system will require the doubling of the numbers both of teachers and classrooms by the end of the century. The

enrolment rate in the lower secondary system has gone down and girls are severely under-represented. In the upper secondary system enrolments have increased and there are now over 55,000 students. Buildings are in poor repair and learning materials and equipment in short supply. Many Cambodian families are too poor to buy books and supplies for their children.

115. Of those currently enrolled in primary school, 15 per cent will continue to lower secondary school, 3.6 per cent to upper secondary. Only 0.85 per cent will receive secondary technical training and only 0.5 per cent will proceed to higher forms of education. However, in total numbers there are now more students than the total number of graduates produced between 1980 and 1990.

116. The Ministry of Education, with the assistance of UNESCO and UNDP, in collaboration with UNICEF and others, is developing a set of comprehensive proposals in five major programme areas. These are, first, to improve access, with special attention to girls and disadvantaged groups, in both lowland and remote areas; second, to improve the internal efficiency of the education system; third, to enhance quality education; fourth, to make education more relevant and fifth to address the special needs of pre-school education.

117. The United Nations Centre for Human Rights, through its Cambodia office, is funding and providing advisory support to a local human rights NGO - the Cambodian Institute for Human Rights - to develop a human rights curriculum in the primary and secondary systems in cooperation with a committee from the Ministry of Education. This is an important project which should see basic human rights instruction occurring throughout the school system by the beginning of the 1995 school year.

## E. Culture

118. Every person has the right to take part in, and have access to, the cultural life of his or her society (International Covenant on Economic, Social and Cultural Rights, art. 15; Universal Declaration of Human Rights, art. 27).

119. Cambodia is a country with a rich and unique cultural heritage, including the Khmer language, dance, theatre, songs, art, and the ancient craft of silkweaving. Perhaps the most magnificent gift of Khmer culture is the complex of temples of Angkor, built between the eleventh and fifteenth centuries.

120. Angkor and Angkorian artifacts must be preserved and protected for all Cambodians, and the world. The looting of monuments and archaeological sites, and the illicit international traffic in Khmer antiquities, is a serious problem. UNESCO has undertaken an ambitious programme in this area, including public information programmes, training of the public and of site police, and technical assistance to the Cambodian Government in drafting legislative solutions.

121. Angkor was placed on the World Heritage List on 14 December 1992. On 10 February 1993, the Supreme National Council of Cambodia adopted "the Decision on the Protection of the Cultural Heritage" aimed at protecting

cultural property. The Cambodian Government, with the technical assistance of UNESCO, is considering further and more detailed legislation. A comprehensive plan for zoning and environmental management of the Angkor site (ZEMP) has been developed.

122. Foreign countries must make greater efforts to prevent illicit trafficking in Khmer artifacts. There is only one international convention on this subject at present: the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (ratified by Cambodia on 26 September 1972). According to UNESCO, among those States considered as "importers" of cultural property, only the United States, Canada, Australia and Italy have ratified the Convention.

## F. Religion

123. Article 43 of the Cambodian Constitution states that Buddhism shall be the State religion but guarantees religious freedom. Over 90 per cent of the Cambodian population belong to the Theravada Buddhist tradition. However, there are significant minorities following Muslim (mostly the Cham minority), Christian and Chinese religious practices. There is no apparent government or other infringements upon the freedom of religion.

124. The Buddhist religion is still a dominant cultural expression. There are now just under 30,000 monks in the country located in approximately 2,100 wats. The leadership of the sangha has been influential and a catalyst for the peace process but also in human rights. One of the major programmes of the UNTAC Human Rights Component was conducted through the Khmer Buddhist Society (an organization funded in the United States) which has conducted a nationwide campaign of human rights education training thousands of monks. This programme is continuing.

## G. Land-mines

125. According to UNESCO, there are between 6 and 10 million mines laid in Cambodia, representing 7 to 11 per cent of the world's uncleared mines. This figure includes anti-personnel and anti-tank mines, as well as unexploded ordnance (UXOs). King Sihanouk recently called for the immediate cessation of all mining in Cambodia by all military personnel.

126. Accurately quantifying the number of Cambodians killed and injured is extremely difficult, as there are no centralized records of deaths, let alone injuries. In Cambodia, where transportation is difficult and the cost of hospital care is beyond the means of the average family, mine victims are often not hospitalized and die at home.

127. As a result of continuing use of mine warfare, Cambodia and Angola are claimed to have the highest proportion of amputees in the world. The total number of amputees in Cambodia, as of September 1993, could be as high as 41,000, representing perhaps one out of every 236 people. While no accurate figures exist on the number of deaths caused by mines, informal estimates are that the death rate roughly equals the injury rate.

128. Land-mines are also used by the civilian population for security, fishing and excavating and are sold for the scrap metal they contain. There are reports of children being used to retrieve mines because of their small and nimble hands. Many injuries and deaths are therefore caused not only by accident but by deliberate misuse.

129. The costs of land-mines to economic growth and development have been extremely high. Vast areas of arable and potentially productive land are unusable, and thousands of able-bodied workers have been maimed or killed.

130. Mine clearance is necessarily labour intensive and slow. Cambodian Mine Action Centre (CMAC) estimated that clearing an area of 10 square kilometres takes at least one month. It is also extremely dangerous. At least 20 deminers were killed or injured during the UNTAC period. A recent attack, attributed to NADK, on a demining team in Banteay Meanchey resulted in several deaths and many injuries.

131. Progress has been made. CMAC reports that demining efforts have succeeded in clearing roughly 22,000 anti-personnel mines, 127 anti-tank mines and almost 140,000 UXOs from Cambodian soil. Sadly, these clearance efforts are being negated in many areas by the continued laying of fresh mines.

## IV. CIVIL AND POLITICAL RIGHTS

### A. Implementation of obligations under international instruments

132. Article 31 of the Constitution of the Kingdom of Cambodia provides, amongst other things, "The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the Charter of the United Nations, the Universal Declaration of Human Rights, the Covenants and Conventions related to human rights, women's and children's rights." While such a recognition of human rights is welcomed, there are serious deficiencies in the Constitution. The most important is that the human rights guarantees are provided only to "Khmer citizens". 18/ For example, article 32 of the Constitution states that "every Khmer citizen shall have the right to life, personal freedom and security". This and many other articles are similarly worded. This formulation excludes many Cambodians, such as non-citizens and visitors, who do not qualify as Khmer citizens, from the ambit of the Constitution. In the absence of a clear law on citizenship and nationality, this may also result in the exclusion of ethnic groups who are not Khmer from constitutional protection. This is contrary to article 2 of the International Covenant on Civil and Political Rights, to which Cambodia is a party. It states, in paragraph 1:

> "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

133. In the historical context of the relationship between ethnic groups in Cambodia, the provisions of the Constitution relating to human rights as they are presently worded may give rise to risk that they could be used to justify discrimination against non-Khmer ethnic groups, such as Cambodians of Vietnamese or other non-Khmer ethnic origin.

134. A number of other essential rights mentioned in the International Covenant on Civil and Political Rights have also not been incorporated in the Constitution or other law. An example would be the right not to be penalized under retroactive criminal laws under article 15 of the Covenant. In this context, it should be noted that annex 5, article 2 of the Paris Peace Agreements required that the new Constitution must "prohibit the retroactive application of criminal law".

135. There are also many instances where the rights have serious limitations imposed on them, thus restricting their application. Such limitations do not include the criteria mentioned in the provisions of the Covenant. For instance, article 31 of the Constitution states that the rights and freedoms shall be exercised "in accordance with the law". Such a formulation may be used to curtail rights and freedoms on the basis of any reason, as long as it is done according to the law. This would appear to contravene the Covenant.

## B. Right to an effective remedy

136. Of particular importance is the lack of compliance with sub-section 3 of article 2 of the International Covenant on Civil and Political Rights, which states: "Each State Party to the present Covenant undertakes:

> (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
>
> (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy ..."

137. The Constitution recognizes the right of Khmer citizens to take action in courts against the violations of rights committed by persons acting in official capacity, in article 39. However, no effective criminal or civil remedies exist in law for the prosecution of persons who engage in violations of rights recognized under the Constitution. This is further aggravated by the fact that because of the terrible weakening of the legal system in the last two decades, many cases of murder (including reported cases of summary executions) and grave crimes go uninvestigated and are not prosecuted in Cambodia.

## C. Right to life

138. The right to life is recognized in the Constitution of the Kingdom of Cambodia in article 32, which states, "Every Khmer citizen shall have the right to life, personal freedom and security". As it stands, it violates article 2 of the International Covenant on Civil and Political Rights since these rights are not granted to all individuals within the territory of Cambodia. Particularly important is the right to life which is a non-derogable provision under article 4 (2) of the Covenant. As pointed out in note 18, the official Khmer version of this article uses the term "all people". This discrepancy between the Khmer and English versions must be resolved and it should be made clear that the right to life shall be enjoyed by all persons in Cambodia and not merely by citizens.

139. For the effective protection of this right, it is essential that any arbitrary deprivation of life is punished by law. Reports indicate killings which are not being investigated by the authorities. It has to be noted here that articles 7 and 10 of the Code of Criminal Procedure obliges the State to carry out prosecutions relating to all crimes, and declares non-prosecution an offence. However, in order to enforce this law, detailed rules and procedures should be worked out to ensure that investigations take place relating to all crimes, particularly those which involve arbitrary deprivation of life.

## D. Freedom from torture, inhuman and degrading punishment

140. Article 38 of the Constitution guarantees that there shall be no physical abuse against any individual. It also states that confessions obtained by physical or mental force shall not be admissible as proof of guilt. In practice, however, reports suggest that arrested persons are frequently subjected to beatings and force is often used to obtain confessions. Arrested persons who are usually unable to prevent such abuses, due to the lack of access to defenders during the pre-trial stage, are usually poor and uninformed about their rights. During trial, accused persons are not given adequate opportunities to contest their confessions, or their contrary statements are ignored. Article 42 of the Code of Criminal Procedure also invests the police reports with a presumption of truth. The net result of these anomalies is that torture and other ill-treatment continue to be practised and tolerated, particularly for obtaining confessions.

### Arrest and detention

141. Article 38 of the Constitution states that the prosecution, arrest and detention of any person "shall not be done except in accordance with the law". Some provisions relating to arrest and detention have been laid down in the Transitional Provisions and the Code of Criminal Procedure. They recognize, inter alia, the right of an arrested person to be brought before a judge within 48 hours. However, it has been admitted by police authorities themselves, and the judges, that this rule is generally not complied with. The law also states that the accused persons must be tried within six months of their arrest. However, cases of persons in detention for longer periods of time, sometimes even for several years, without being brought before a court have been reported. Some were seen by the Special Representative during his visit to the prison in Battambang. There are also cases of persons arrested or detained on criminal charges who are not brought before a judge or other officer authorized by law to exercise judicial power, in accordance with Cambodian law.

142. According to Cambodian law, arrested persons must be released if they are not tried without delay. The release subject to the guarantee of bail is recognized in the Code of Criminal Procedure. The Cambodia office of the United Nations Centre for Human Rights knows of several instances in recent months in which persons were granted bail pending trial at a later stage. However, the rules that relate to bail are not uniformly applied in practice. In some cases, persons who had been charged with serious crimes such as murder were released on bail whereas many other persons alleged to have committed similar crimes have not been granted bail, even though they have been in prison for a longer period. If equality before law is to be guaranteed in this respect, it is essential that the rules relating to bail be evenly applied. Judges and the police sometimes express the concern that once persons are released on bail, they may not appear in court again and that given the conditions in Cambodia, it may not be possible to trace them. This may be due to the lack of close coordination between the courts and the police in the execution of pre-trial orders made by the courts.

143. In Cambodian law there is no provision for those arrested or detained to institute proceedings before a court of law in order that the court may decide, without delay, on the lawfulness of the detention, and order release if the detention is not lawful. In practice, prosecutors and judges deal only with those cases in which files have been received from the police. This means that those detainees whose files have not been forwarded to the court remain in police custody without any remedy. The courts in Cambodia do not issue writs such as writs of habeas corpus.

144. The right of arrested persons to be informed at the time of the arrest of the reason for their arrest and any charges against them is not recognized in Cambodian law. The right of victims of unlawful arrest or detention to have an enforceable right to compensation has not been recognized either. The law and practice relating to arrest and detention are not in full compliance with the provisions of the International Covenant on Civil and Political Rights, even though many encouraging changes have occurred.

### E. The right of persons deprived of their liberty to be treated humanely

145. Reports indicate that the treatment of prisoners remains below international standards, even though positive improvements have occurred. Until 1992, shackling of prisoners remained a common practice and it largely ceased when the SoC issued instructions to prison authorities to stop. However, even in 1993 there were some instances of shackling in prisons.

146. The use of dark, unventilated, small rooms as holding cells has largely ceased. However, in some prisons, dark cells exist. Accused persons are usually not segregated from convicted persons, and therefore do not receive separate treatment appropriate to their status as unconvicted prisoners. Juveniles are not always separated from adults and are not speedily brought forward for adjudication. In almost all prisons, young prisoners are put in the same cells as adults. Women prisoners are guarded almost exclusively by male guards, and there are reports of sexual mistreatment or coercion. By the same token, the prison at Battambang which was inspected by the Special Representative was clean and airy. No prisoner voiced complaints about conditions or treatment. The complaints rather concerned delays in trial hearings.

147. As of 23 January 1994, there were 1,779 prisoners in Cambodia, 81 of whom were women. Of these, 664 had been convicted and sentenced, including 34 women; 1,115 prisoners were awaiting trial, including 47 women. As can be readily seen from these statistics, one of the major problems in the prisons is the large number of unconvicted prisoners. Many had not been brought before a judge and thus remained in police detention. The organization of the Prison Department under the Ministry of the Interior and the inability of courts to review legality of detentions on their own initiative also mean that arrested persons may, and in fact often do, remain in detention without any prospects of release. This would improve significantly if judges or prosecutors would visit the prisons regularly.

148. In this connection, the seminar on administration of justice, attended by judges, prosecutors and officials from the Ministry of the Interior and organized by the Cambodia office of the United Nations Centre for Human

Rights, 11-17 January 1994, recommended that jurisdiction over the prisons be transferred to the Ministry of Justice. The Ministry of Justice has also instructed all prosecutors in Cambodia to visit the prisons within their jurisdiction once every two weeks or at least once a month, and report to the Ministry on the conditions of the prisoners and any matters relating to violations of their rights. However, this instruction has not yet been adhered to. The judges appear to have no obligation under the law to visit prisons on a regular basis, although it appears that they have the right to do so.

## F. Due process

149. In the determination of criminal charges against accused persons, the conduct of trials suffers from many procedural and other defects. The trials are conducted in public in theory but are in fact held in camera, and not always in the presence of the accused. Members of the public do not attend trials and the courts also sometimes restrict the attendance of persons to those holding an invitation or a summons. Negotiations with the complainant at times take place in the absence of the accused, thus depriving the right of parties to be aware of the nature of the trial that is being carried out. Some negotiations also take place between judges and the Ministry of Justice relating to trials. 19/ In the provinces, these matters are often with the Provincial Governor's office. 20/ Besides contravening the independence of the judiciary, these practices deprive the accused persons of due process. All these practices contravene article 14 (1) of the International Covenant on Civil and Political Rights which states, inter alia, that "everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law".

150. The right of a person charged with a criminal offence to be presumed innocent has been recognized in article 39 of the Constitution and by the Transitional Provisions. In practice, that principle has not yet been realized. This is particularly evident during the trial, where confessions obtained by the police and included as part of the police file are relied upon to convict the accused persons, despite their protests that the confessions were obtained under duress. Also, the organization of the trial is such that it compels the accused to prove innocence and not vice versa.

151. Article 14, paragraph 3, of the International Covenant on Civil and Political Rights grants many rights which can be properly implemented only if defenders are recognized and permitted to represent accused persons before the courts of Cambodia. The concept of independent defenders is new to Cambodia even though there are now a number of defenders who perform the functions of defence counsel. Their work is impeded, however, by the fact that the accused persons are usually informed of the charge only at the moment of trial. Due to the limited access of the defenders to their clients in custody, adequate facilities for preparation of the defence and communication with the counsel of the accused persons' choosing are usually not complied with.

152. A number of courts have made an attempt to inform the accused persons of their right to legal assistance and at times have even contacted the defenders associations on behalf of the accused in order to provide a legal counsel before trial. This practice needs to be universally followed. There has not

been any legal assistance programme sponsored by the State so far. The defenders have organized themselves as NGOs and look for support for their association in providing legal assistance. It is unlikely that the State will be in a position to provide substantial legal assistance in the near future and, as a result, the defenders associations need to be supported.

153. The right to examine, or have examined, the witnesses against an accused and to obtain attendance and examination of witnesses on their behalf under the same condition as the witnesses against them have not been recognized. Most trials take place without any examination of witnesses. The defenders associations have constantly complained regarding this matter. The investigators who conduct investigations are not called to court to give evidence. Thus, the accused persons do not have an opportunity to examine the evidence against them. Particularly in the context of many allegations of confessions obtained under duress, the opportunity for examination of these witnesses is necessary if the accused is to be afforded due process. The expert witnesses are also not called to court. Given the rudimentary methods of investigation and verification of facts used by these experts, it is necessary that the accused should have the opportunity to examine such witnesses. The order of examination has also not been specified in the law. This results in the adoption of arbitrary practices by some courts which weaken the right of accused persons to fully defend themselves.

154. Another serious omission in due process relates to the protection against double jeopardy under article 14 (7).

## G. Right of review

155. Convicted persons in Cambodia do not have a real possibility to have a conviction or sentence reviewed by a higher tribunal according to law (International Covenant on Civil and Political Rights, art. 145). The recognition of the right of review in the Transitional Provisions and the Code of Criminal Procedure remains only on paper. For many years now, no court has reviewed any conviction or sentence made by another tribunal or court of law. The Supreme People's Court of the SoC received the files from the provincial courts but did not review any conviction or sentence. Since the creation of an appeal court by the Transitional Provisions, there have been attempts to appoint judges and enable its functioning. However, the appeal court has not yet started functioning.

156. The absence of a court for reviewing judgements of provincial courts remains one of the major problems in the Cambodian legal system. This is further aggravated by review of judgements by administrative bodies such as the Ministry of Justice, and in the provinces, by the office of the Governor. This offends the separation of powers and is one of the areas that requires urgent reform.

## H. Illegal searches

157. Although the Constitution guarantees the right to be free from illegal searches and the right to privacy and the Transitional Provisions provide for search warrants, reports indicate that searches are sometimes conducted without warrants and are sometimes conducted for private purposes and not in the course of criminal investigations.

## I. Freedom of religion

158. In recent years, particularly after the amendment of the Constitution of the SoC in 1989 and in the months following the formation of the new Government, there has been a remarkable improvement in the practice of freedom of religion. The Constitution of the Kingdom of Cambodia, in article 43, has recognized Buddhism as the State religion. Many wats (temples) have been rebuilt and the Buddhist religion, which is the religion of the vast majority of people, has begun to flourish again. Other communities such as the Christians, Muslims (Chams) and hill tribes, which have their own tribal practices, also coexist peacefully in Cambodia.

## J. Freedom of expression

159. Article 41 of the Constitution recognizes freedom of expression, the press and publication. These freedoms have begun to take root since 1991 and 1992. Newspapers are being published in Khmer, English, French and Chinese and their number has risen to more than 20. The Government's radio station coexists with a FUNCINPEC station and short-wave radio is widely available and popular. There are four television stations, one of them privately owned. The newspapers, particularly the Khmer ones, freely criticize the Government's policies and leaders. These developments are unprecedented and the more remarkable after two decades of war and isolation.

160. Such developments have been clouded, however, by certain political and legal developments since 1993. On 6 April 1993, the National Assembly of the State of Cambodia passed a Press Law, which imposed severe restrictions on the freedom of the press and threatened the existence of the press as an independent institution. However, this law was not promulgated. In December 1993, the Council of Ministers determined that this law was still in force and that it might be applied by internal regulations. There have also been suggestions to ban criticism of particular leaders and publications that publish "obscene" or "graphically violent" pictures. In November 1993, the journalists were asked by the Ministry of Information to sign statements that they would not act against national security. Most of them signed. Some NGOs have also suggested that the press may be muzzled in preparation for a large-scale mobilization against the PDK in order to prevent criticisms of policies and practices. It must be noted here that the 1993 Press Law bans publication of materials that will affect "soldiers' discipline". Suggestions to reinstitute the 1993 law must be viewed in the context of all these developments.

161. The effort to reinstitute the 1993 law has caused considerable concern among journalists, both local and foreign. The local press views it as an attempt to limit its freedom of expression. The foreign press - especially

newspapers owned by foreign nationals - are worried that it may be used to attempt to close down their offices. The Press Law of 1993 bans foreign ownership of the press. All agree, however, that the 1993 law is unconstitutional. Article 139 of the Constitution states that all laws passed prior to its adoption shall remain valid, unless they are against the spirit of the Constitution. Journalists argue that the 1993 law is against the spirit of the Constitution, since freedom of expression and press are guaranteed under article 41 and right to ownership is guaranteed to all persons under article 44.

162. Local journalists have formed a new association. In December 1993, an Association of Khmer Journalists was established to promote and protect freedom of expression and to impose measures of self-regulation on the media. The Ministry of Information has welcomed the formation of this association and its purposes.

163. The Ministry of Information has also formulated a new draft Press Law and introduced it in the Council of Ministers. It is expected that this draft will be submitted to the National Assembly soon. The draft provides for press freedoms, including access to Government-held records, and deals with press responsibilities, including the adoption of a Code of Ethics based on the International Federation of Journalists' Code, which will have to be adopted by journalists' associations. The draft also provides for the protection of rights to privacy and fair trial and has reasonable limitations on freedom of expression.

164. It is essential that the 1993 law be abrogated in its entirety if freedom of expression and the press, guaranteed in the Constitution, are to be realized. The draft prepared by the Ministry of Information attempts to correct many defects in the earlier law. The draft must be circulated widely to all interested persons and their views solicited before it is introduced in the Assembly. The Human Rights Commission of the National Assembly plans to open a public hearing on the draft and its involvement should be encouraged before the draft is sent to the Assembly.

## K. **Freedom of association**

165. One of the fundamental and visible changes in Cambodian society since 1991 has been the proliferation of various non-governmental associations (NGOs). These NGOs have established a wide network and have exhibited a high capacity for mobilization and dedication. The formation of these NGOs is the first step towards a civil society in Cambodia after its destruction between 1975 and 1978. The May 1993 election also saw flourishing political activity with 20 political parties contesting the election, even though most of these parties have closed down after the election.

166. The freedom of association enjoyed by these groups has varied to a considerable extent. The associations, particularly the human rights NGOs and political parties, were subjected to widespread harassment and intimidation before the election. The post-election period has been comparatively calmer and the NGOs have enjoyed a reasonably high level of freedom. The Constitution has also guaranteed freedom of association in its article 42, although it restricts that freedom to Khmer citizens. While these

developments are encouraging, rules for registration of associations must be drafted as soon as possible to regularize the legal status and functioning of associations.

167. The Constitution must guarantee freedom of association to non-citizens also, in conformity with international human rights standards. Article 42 of the Constitution also states that freedom of association "shall be determined by law". Such a broadly worded omnibus provision must be reworded or be narrowly implemented.

## L. Freedom of movement

168. The control over movement of persons within the country was a basic aspect of Cambodian political and social life. Before the May 199[illegible] election, the party structure at the village and commune level was able to exercise control over the entry and exit of persons in areas under their control. Such controls were exacerbated by the lack of security and economic opportunities. The controls at the village and commune level were supported by controls at the national level. The freedom to leave the country was strictly limited by the selective issuance of passports. Such controls and limits have been slowly dismantled in the post-election period.

169. The most significant changes have occurred at the village and commune levels leading to greater freedom of movement in the countryside. There has also been a recent proposal to introduce commune-level elections in order to reform the local administration. Such measures will add to the dismantling process, and are necessary to ensure the replacement of individuals who have been found to have abused power in the past.

170. The major impediments to freedom of movement in the countryside are related to security in general and to land-mines in particular. The continuing low-level warfare displaces people from their places of living and prevents them from relocating to alternative places. Land-mines continue to be laid by the combatants, leading to restrictions in land use and movement of people. The end of combat and the removal of land-mines are central to the effective enjoyment of freedom of movement in Cambodia.

171. The control at the national level, particularly in the issuance of passports, has been relaxed considerably. The Constitution, in article 40, also guarantees the right of Khmer citizens to travel abroad and return. More reforms are under way to enable the free movement of persons to and from the country.

172. Article 40 of the Constitution guarantees the freedom to travel, move and settle in any place in Cambodia. Such freedom is seriously curtailed at present due to the high level of banditry on highways and the inability of the Government to guarantee law and order. Travel during the day on highways remains risky, with soldiers reportedly demanding money as a "travel tax" and bandits committing robbery. Travel during the night is dangerous and therefore rare. Unless speedier improvements are made to guarantee security on roads, the freedom of movement of Cambodians will remain largely illusory.

## V. VULNERABLE GROUPS

### A. Women

173. The year 1993 marked a turning-point for Cambodia, including positive changes for the rights of women. The elections supervised by the United Nations, the formation of a multi-party Government and the adoption of a new Constitution have opened the door for important progress in the area of women's rights on both the governmental and societal levels.

174. Cambodia is a party to the Convention of the Elimination of All Forms of Discrimination against Women and the two International Covenants on Human Rights.

175. Chapter 3 of the Constitution states, "The Kingdom of Cambodia shall recognize and respect human rights in the United Nations Charter, the Universal Declaration of Human Rights and all conventions related to human rights, and women's and children's rights." The new Constitution guarantees equal rights, equal access to services and employment opportunities, participation in public life and protection from discrimination and exploitation of women. Review of laws, enforcement mechanisms, policies and programmes relating to these rights have been promised by the Secretary of State for Women's Affairs in a recent public statement.

176. Political change has also enabled the nascent human rights movement to gain a foothold in Cambodian society. Since 1991, dozens of human rights, civic and community organizations have sprung up, including some 15 groups involved in women's welfare and the rights of women. These groups played an important role in advocating women's rights during the electoral process and in the drafting of the Constitution. Advocacy efforts by community groups, and the willingness of the Government to respond to their concerns, bodes well for the future.

177. United Nations agencies (namely UNICEF and UNIFEM) and international non-governmental organizations (NGOs) have also made significant contributions in the areas of community development, health, education and advocacy for women. The Women in Development Programme of UNICEF focuses on raising the level of women's skills, as well as their status in society. Programmes are implemented through the grass-roots-level networks of the Women's Association of Cambodia (formerly the Khmer Women's Association, a national organization under the SoC Government).

178. UNIFEM's aim in Cambodia is to raise women's issues to the policy level and make Government and key institutions respond. UNIFEM played a key role in organizing the National Women's Summit in March 1993 as a part of its Gender Issues in the General Election programme. A UNIFEM consultant has recently arrived in Cambodia to provide technical assistance to the Secretary of State for Women's Affairs in reviewing existing legislation with regard to gender sensitization, and to aid in the drafting of new laws and practices that promote gender equality.

179. Many challenges remain in the achievement of women's political, social and human rights. More than two decades of conflict and social disruption have taken a severe toll on the Cambodian family. Since 1979, the role and responsibilities of women, who make up approximately 60 per cent of the adult population, have increased dramatically. Women now head nearly one third of all Cambodian households and have an average of five children. Few services, such as day care and birth spacing programmes, exist to help alleviate their load.

180. In addition to raising their children and running the household, many Cambodian women must earn an income outside the home. Women play a key role in Cambodia's economy and make up more than 60 per cent of the agricultural labour force and 67 per cent of all industrial workers. Economic responsibilities and household and family tasks often keep women occupied up to 16 hours a day.

181. A 1993 UNIFEM fact sheet cites the lack of educational opportunities for Cambodian women as the greatest obstacle to their advancement in society. In many poor families, female children are forced to discontinue their studies to help parents with farm work or at home. The illiteracy rate among Cambodian women is estimated to be between 60 and 70 per cent and only 19 per cent of Cambodian high school students are female.

182. Poor health, whilst a significant national problem, takes a particular toll on women, who are often malnourished and overworked, and their children. Clean water, sanitation and access to affordable, quality health care remain out of the reach of most Cambodians. Nearly 1 per cent of women die in childbirth.

183. Cambodian women are particularly vulnerable to the social problems left in the wake of decades of warfare, as evidenced by the large number of widows who bear the sole responsibility for supporting their families. Cambodian women's NGOs report that marriage breakdown, abandonment and polygamy among Cambodian men is on the rise, as are domestic abuse, divorce and forced marriages.

184. Hand in hand with the recent increase of wealth in society has been a rise in prostitution. According to Cambodian NGOs, sexual promiscuity among Cambodian men, particularly in urban areas, with commercial sex workers exposes women to sexually transmitted diseases and HIV. A 1993 UNRISD report on the peace process in Cambodia states that the presence of UNTAC contributed to the increase in prostitution and the spread of sexually transmitted diseases.

185. NGOs and United Nations agencies report that abduction and trafficking in women and children, rape and child prostitution are also growing at a worrying rate. Local media report the abduction of young women, who are then allegedly sold into prostitution, on an almost daily basis. A group of concerned NGOs and United Nations agencies have formed a Child Welfare Group that, among its other activities, will be monitoring this problem.

186. Civic organizations and Cambodian human rights groups say that while the burden on women has increased, their participation in public life and Government has not. Women are often relegated to lower-level service and clerical tasks in the professional domain. Although they make up 54 per cent of the electorate, only 5 of the 120 National Assembly members are women. No women hold ministerial or vice-ministerial posts and virtually all Secretaries of State, including the one for Women's Affairs, are men. Women are very active in the human rights field. Three of the seven members of the Human Rights Commission of the National Assembly are female. Three of the leaders of the largest Cambodian human rights NGOs are women. The education and empowerment of women are a key to economic progress in Cambodia and to the long-term assurances of fundamental human rights.

## B. Children

187. Cambodia is a party to the Convention on the Rights of the Child. The Constitution states in article 48 that, "The State is committed to defending the rights of the child contained in the Convention on the Rights of the Child, particularly the right to life, education, protection during wartime and against economic or sexual exploitation. The State shall deal strongly against any action that infringes upon the education provided to children or which undermines their health or their welfare."

188. In his capacity as President of the Supreme National Council, King Sihanouk signed the Declaration of the World Summit for Children in February 1993.

189. The Cambodian Government's commitment to protecting and promoting the rights of its most precious resource - its children - is indeed a positive step. The development of educational opportunities, the advancement of health and social services, and protection from abuse and exploitation are important investments in the future of the nation.

190. More than 20 per cent of the Cambodian population is estimated to be under four years of age. At least 45 per cent is under the age of 15. However, the infant mortality rate is also high: 123 per 1,000 live births. One out five Cambodian children die before reaching five years of age. Diarrhoeal disease is responsible for 40 per cent of child deaths in Cambodia. Child malnutrition (22 per cent in Phnom Penh and 32 per cent in the provinces) is exacerbated by the high prevalence of infectious disease. Lack of proper sanitation and safe drinking water are major causes of disease and illness among the population, according to UNICEF.

191. Primary school enrolment in Phnom Penh is reported at an encouraging 90 per cent, while schools in provincial centres have 70 per cent enrolment. Sadly, in some rural areas, enrolment is reportedly as low as 20 per cent. The attrition rate among female students is particularly high.

192. UNICEF reports that poverty forces many children to leave their studies. Orphans and children of single parents, of which there are thousands in Cambodia, are particularly vulnerable. Thousands of children also beg, scavenge and sell goods on the streets, exposing them to exploitation. UNICEF

reports that young street boys are easily coerced, by threats of violence, into participating in robbery and theft. There is no separate system for protecting the rights of juvenile offenders. The buying and selling of women and children is reported to be a growing business, both domestically and across borders, according to UNICEF. Child labour is widely used and unregulated.

193. Many international organizations, NGOs and United Nations agencies (such as UNICEF, UNESCO and UNDP) are providing assistance to the Government and to Cambodia's children in the areas of child health, education, food security, water and sanitation, social services and advocacy.

194. UNICEF is active in spreading awareness and advocacy of the Convention on the Rights of the Child and the related responsibility of the Government for implementation and reporting. To that end, UNICEF has recently hired a consultant to help the Government meet its reporting obligations under the Convention. A National Plan of Action for Street Children is also being developed.

195. In collaboration with the Ministry of Social, Labour and Veterans Affairs, and NGOs, UNICEF's "Children in Especially Difficult Circumstances" programme initiated the creation of a Child Welfare Group which is committed to advocacy, networking and planning on behalf of the most vulnerable children in Cambodia. The Cambodia office of the United Nations Centre for Human Rights is cooperating closely with UNICEF in its activities.

### C. **Ethnic and religious minorities**

196. Approximately 90 per cent of the Cambodian population are ethnic Khmer. People of Vietnamese ethnicity are the largest minority group, comprising perhaps 5 per cent of the population. Other populous minorities are the Chinese, Cham-Muslims, indigenous groups located primarily in the north-east (hill-tribe people or highlanders) and the Kampuchea Krom, ethnic Khmers who derive from southern Viet Nam in an area formerly part of the Khmer empire.

197. The Constitution of Cambodia contains some provisions directly relevant to ethnic or religious minorities. Article 42, for example, states that, "The freedom of belief and religious practices shall be guaranteed by the State under the condition that they do not affect other beliefs or religions and public law and order."

198. Unfortunately, there is no general anti-discrimination clause in the Constitution. There is, however, a provision (art. 31) which stipulates that the Kingdom of Cambodia "shall recognize and respect human rights" as defined in various international instruments. Among other conventions, Cambodia has ratified the International Convention on the Elimination of All Forms of Racial Discrimination.

199. Most fundamental rights enshrined in the Constitution are restricted to "Khmer citizens". These include such fundamental rights as the right to participate in the economic and cultural activities of the country, mobility rights, freedom of expression, peaceful association and assembly. The articles delineating the obligation to respect the law and Constitution also

refer only to "Khmer citizens" (arts. 49 and 50). The use of the word "Khmer" in this context may be an oversight in drafting or an anomaly in translation. Although "Khmer" refers, strictly speaking, to an ethnic and linguistic group, the term is used colloquially as a synonym for "Cambodian". None the less, it could be interpreted, especially by juxtaposition with the use elsewhere of "Cambodian", as conferring basic constitutional rights solely to Cambodians of Khmer ethnicity. This would be contrary to the fundamental principle that basic human rights are ensured to all individuals within the territory of a State party (as provided for in the International Convention on Civil and Political Rights) and could result in grave injustice to minority populations of Cambodia.

200. Similar objections apply to the restriction of certain basic rights to "citizens". There are numerous people, particularly amongst minority populations, who are legally entitled to reside in Cambodia but who do not have full citizenship status. It would be a fundamental departure from international human rights law to deny this group the same legal protection as other legal residents.

201. **Chinese**. There may be as many as 200,000 ethnic Chinese in Cambodia. Historically, this community has been relatively autonomous. After 1970, Chinese schools were ordered to be closed and Chinese businesses and people heavily taxed. During the period of Khmer Rouge rule, Chinese were generally considered part of the bourgeois class which suffered disproportionately from gross violations of human rights. It was not until 1990 that Chinese schools were allowed to reopen and a Chinese Association formed. In general, the Chinese community is at present largely integrated and accepted in Cambodia.

202. **Cham-Muslim**. Studies have estimated the Cham-Muslim population at approximately 200,000, representing the largest non-Buddhist sector in Cambodia. The practice of Islam is tolerated and even encouraged. As with the Chinese, little friction exists between the Cham-Muslim community and the Khmer majority.

203. **Indigenous groups of the north-east**. The highlanders, or hill-tribe people, reside almost exclusively in the rugged north-eastern provinces of Cambodia. According to reports, there are as many as 75,000 highlanders belonging to at least 25 different ethnic and linguistic groups. Malaria and other diseases are widespread, and there is little access to modern medicine and treatment. The highlanders also face challenges to their culture and traditional way of life from the inevitable encroachment of modernization, and have formed a "Highlanders Association" to address these and other problems.

204. **Khmer Kampuchea Krom**. These are ethnic Khmers who originate from southern Viet Nam in an area formerly part of the Khmer empire. The area is known to Cambodians as "Kampuchea Krom" or, roughly translated, "Lower Cambodia". Although there has been no accurate census of this minority, the Khmer Kampuchea Krom Association estimates the population to be 50,000 in Cambodia. According to their Association, Khmer Kampuchea Krom were persecuted in Viet Nam, especially during the periods of war, because of their linguistic and cultural links to Cambodia. However, in Cambodia, they claim to be the target of basic prejudice and racist acts due to their connection with Viet Nam.

205. **Vietnamese.** The presence of ethnic Vietnamese in Cambodia is not a recent phenomenon. The old Vietnamese empires for several centuries fought over, subjugated and colonized some parts of Cambodian territory. Vietnamese administrators were brought in by the French colonizers to assist in administration of the country. Large numbers migrated to Cambodia at the end of the nineteenth century, drawn by fertile fishing in the Tonle Sap. By 1970, there were estimated to be 300,000 to 500,000 ethnic Vietnamese in Cambodia.

206. A pogrom in 1970 resulted in brutal killings and forced repatriation of thousands of ethnic Vietnamese. During the PDK reign of 1975 to late 1978, thousands fled to Viet Nam and Thailand to escape massive human rights violations. A large migration to Cambodia followed the Vietnamese invasion in 1979. When Vietnamese forces withdrew in 1989, many ethnic Vietnamese civilians remained. A great number of these reside legally in Cambodia. However, it is true that many migrated illegally to Cambodia after 1979, during a period when border controls were erratic.

207. Perhaps the gravest problem for ethnic Vietnamese in Cambodia is the continued threat to their security in the face of a vicious anti-Vietnamese campaign by the PDK. The PDK justifies its action by allegations that an occupying Vietnamese army remained after 1989, disguised as civilians, with intentions to take over Cambodia. During 1992, at least 50 ethnic Vietnamese were killed and 70 wounded in brutal attacks by NADK forces loyal to the PDK. The victims were invariably unarmed, many were women and children. February to April 1993 saw the worst atrocities. On 10 March 1993 unarmed ethnic Vietnamese were massacred and some 24 were wounded when a NADK unit attacked a video hall in Siem Reap. About the same time, there were a series of grenade attacks against businesses frequented by Vietnamese in Phnom Penh.

208. These and numerous other incidents prompted a mass exodus of ethnic Vietnamese from Cambodia. Armed UNTAC naval personnel assisted at least 30,000 people down the Mekong and Bassac rivers to Viet Nam.

209. The Khmer Rouge continue to threaten the lives and security of ethnic Vietnamese in Cambodia. In July and August, NADK attacks claimed the lives of at least 18 ethnic Vietnamese in Kampong Chhnang province. Six more were reported to have been kidnapped and murdered by Khmer Rouge in November and December.

210. As a backdrop to these kidnappings and murders, the PDK radio constantly broadcasts messages of ethnic hatred and incitement to violence against ethnic Vietnamese. These broadcasts call on Cambodians to purge, through violent means, all Vietnamese from Cambodia.

211. The security of Cambodians of Vietnamese origin (and other immigrant minorities) is further threatened by uncertainty as to their legal status. It is unclear what documentation is necessary to prove legal residence in Cambodia. Identification issued during the SoC regime is often unacceptable to present government officials. The problem is exacerbated by the apparent ready availability of forged documentation. Minority groups, including ethnic Vietnamese, are therefore in the extremely vulnerable position of being unable to confirm their legal status. This is true not only for recent arrivals, but

also for long-term residents and those born in Cambodia. A comprehensive immigration and citizenship law does not yet exist in Cambodia. Immigration procedures are not standardized, and there is no established tribunal to deal effectively and expeditiously with immigration and citizenship claims.

212. This problem is most vividly exemplified by at least 5,000 ethnic Vietnamese who are presently massed at Trey Thom on the Bassac river, at the Cambodia-Viet Nam border. They are being denied entry into Cambodia. Some have been there one year. Most claim to be first- or second-generation Cambodians who fled to Viet Nam during the pre-election violence. Virtually all have documentation which appears to have been issued either prior to 1975, or post-1979 during the SoC regime.

## D. Returnees and internally displaced persons

213. One of the greatest achievements of the peace process was the successful repatriation of some 370,000 Cambodian refugees and displaced persons from the border camps in Thailand. The inter-agency repatriation exercise, coordinated by UNHCR and UNTAC, included the participation of United Nations agencies, NGOs and international organizations. The World Food Programme has provided and monitored the distribution of food to the returnees.

214. Though repatriation was officially completed in April 1993, a longer and more enduring problem facing Cambodia is the successful resettlement and social reintegration of these returnees.

215. For many Cambodians in the border camps, the return to their homeland was a long-awaited event. Returnees who had families, homes and communities to return to had a safety net to support their reintegration into society. A number of Cambodians in the camps received education and skills training and were able to find employment, particularly with UNTAC, upon their return. Others have found the adjustment to life back in Cambodia more difficult. Many returnees lost contact with their families when they left the country. Others left behind claims to property and have returned to Cambodia landless and without any means of support, aside from the basic assistance provided by UNHCR.

216. Some returnees complain of difficulties in finding work in the public sector and in accessing health services and educational opportunities. They cite discrimination against "newcomers" as the cause. Vulnerable groups - handicapped, widows, single parents and orphans - represent a significant percentage of the returnee population. WFP reports that almost half of the returnee families are headed by a single female, handicapped or elderly person.

217. Prior to the election, reports of persecution, intimidation and harassment of returnees for political reasons was reported to UNTAC and to human rights NGOs. While political intimidation in general appears to have waned in the post-electoral environment, the particularly vulnerable position of returnees exposes them to persecution and "scapegoatism". For example, a common explanation, made by the authorities, for the rise in crime during the UNTAC period was the return of "criminals" from the border.

218. UNHCR's major concern is that returnees should not face discrimination and persecution. Important issues include access to land and land titles, basic health services, employment in the public sector, education and access to identification documents and passports. In order to fulfil their protection mandate, UNHCR says it needs access to all returnees, refugees and asylum seekers, including those in prisons and detention centres, to ensure that persecution is not taking place. Free and confidential contact is needed to ensure that charges and sentences and the length of time cases take to reach trial are comparable to those of other persons.

219. According to a 1993 UNRISD report, there are an estimated 165,000 internally displaced persons (IDPs) in Cambodia who have been driven off their land and out of their villages by continued fighting and insecurity. Most of this number are persons displaced from their homes during the legacy of civil conflict over the past 14 years, particularly in the mid-1980s. Some were relocated from villages bordering PDK-controlled zones to areas under firmer government control. WFP has provided emergency assistance to the vast majority of Cambodia's internally displaced persons.

220. Some of these "IDP camps" have become permanent village-like communities. Many residents of these camps say that though they wish to return to their homes, they are afraid to do so because of land-mines. Others go to their farms in the daytime, but return to the camps at night because of lack of security. Resettlement of this population remains a problem.

221. The UNRISD report states that if the security situation further deteriorates and fighting continues, the number of internally displaced persons will most certainly increase. With media reports of an upcoming traditional dry-season offensive, civilians near contested areas are likely to be affected.

## E. **Handicapped**

222. Article 74 of the Cambodian Constitution states, "The State shall assist the disabled and the families of combatants who sacrificed their lives for the nation." According to an UNRISD report, 4 out of every 1,000 Cambodians are disabled. Mine injuries, by far, account for the largest percentage of this figure. With an estimated 35,000 to 40,000 amputees, Cambodia has the highest proportion of physically disabled inhabitants in the world.

223. Despite the commendable work by international and non-governmental organizations in Cambodia in making prosthetic devices, only one in eight amputees has received an artificial limb, as of May 1993. According to the UNRISD report, it will take another 25 years to provide all of Cambodia's amputees with prostheses.

224. Poor nutrition and disease are also major causes of disability. According to a 1990 UNICEF report, the main causes of disability, including deafness and blindness, among children aged five and under in Cambodia (polio, meningitis, encephalitis, nutritional deficiencies and infections) are diseases preventable through better health care, immunization, improved hygiene, health education and proper delivery practices. Hearing aids and eyeglasses, particularly for children, are also not widely available.

225. The Government has few resources to meet the needs of the disabled population and has relied on assistance from international sources. Handicapped persons who are not cared for by their families and do not live in State institutions are often forced to beg on the streets to survive.

226. Government-run "orphanages" continue to be used as institutions for physically and mentally handicapped citizens. It is not uncommon to find severely disabled adults living among orphaned children and destitute widows and their children at these locations, many of which lack the most basic necessities such as running water and electricity, much less have the resources to offer rehabilitation programmes. Only a handful of these orphanages receive assistance from international sources.

227. There are a number of United Nations agencies, international organizations and NGOs with programmes in mine awareness and clearance, the production of prosthetic devices and wheelchairs, providing physical therapy and rehabilitation services, and running skills-training courses for disabled persons. Tragically, land-mines continue to be laid on Cambodia soil faster than it is possible to clear them. As this practice continues, there will be more disabled Cambodians requiring these already limited services.

228. UNICEF, WHO and several NGOs have vaccination campaigns to combat polio and other diseases. United Nations agencies, international organizations, NGOs and the Government are also making progress across the health spectrum - a positive sign with regard to the prevention and treatment of crippling disease and illness. There are virtually no trained professionals or institutions in Cambodia for mental health or for aiding the mentally handicapped, though recently some international NGOs have begun addressing this issue. At least one NGO is focusing on the needs of elderly citizens.

## VI. THE CAMBODIA OFFICE OF THE UNITED NATIONS CENTRE FOR HUMAN RIGHTS

### A. Establishment of the office and contacts with the Government

229. As mentioned previously, the United Nations Centre for Human Rights established its office in Phnom Penh on 1 October 1993, immediately after the departure of UNTAC's Human Rights Component at the end of September 1993. A staff member of the Advisory Services, Technical Assistance and Information Branch of the Centre was attached for a period of two months to the office in Phnom Penh, in order to assist in the establishment of the office and in the commencement of the Centre's human rights activities.

230. Pursuant to resolution 1993/6 of the Commission on Human Rights, the Secretary-General was to communicate the contents of the resolution and seek the consent and cooperation of the newly elected Government of Cambodia to facilitate the tasks of the Special Representative and the Centre for Human Rights in the fulfilment of their respective mandates. Accordingly, the Assistant Secretary-General for Human Rights, Mr. Ibrahima Fall, wrote on 5 October 1993 to the First Prime Minister of the Royal Government of Cambodia, H.R.H. Prince Norodom Ranariddh Varman, and to the Second Prime Minister, H.E. Mr. Hun Sen. On 6 November, Prince Norodom Ranariddh Varman and Mr. Hun Sen wrote to Mr. Fall congratulating him on the establishment of the office of the Centre for Human Rights in Phnom Penh, and on his efforts aiming at ensuring continuity in the activities in the protection and promotion of human rights in Cambodia. They also expressed the full consent of the Royal National Government of Cambodia and ensured its total cooperation to facilitate the mandate of the Special Representative and of the Centre for Human Rights (see annex II).

### B. Funding of the office

231. Salaries of the local and international staff as well as general expenses for the operation of the office are to be financed under the United Nations regular budget. The budget necessary to implement the mandate entrusted to the Centre for Human Rights by Commission resolution 1993/6 was estimated by the Centre at US$ 661,750 for six months. This amount included salaries for 9 international staff and 10 international and local General Services staff; operational expenses; travel of the Special Representative of the Secretary-General and of the staff of the Centre, including within Cambodia. In September 1993, the Advisory Committee on Administrative and Budgetary Questions (ACABQ) authorized US$ 288,000 for the Centre for the period October to December 1993. This included salaries of eight international Professional staff, five local General Service staff, general operating expenses and travel of the Special Representative.

232. Subsequently, the Centre submitted on 30 November 1993, through the Programme Planning and Budget Department, for approval by the General Assembly at its forty-eighth session, a budget of US$ 2,781,000 for the biennium 1994-1995. However, in December 1993, ACABQ authorized a budget of US$ 550,000 covering only the first six months of 1994.

## C. Programme of activities

233. All activities to be implemented by the Centre according to resolution 1993/6 will have to be financed through extrabudgetary resources from voluntary contributions.

234. Within the framework of the objectives defined by the Commission on Human Rights, the Centre has elaborated a programme of human rights activities in Cambodia for the period 1994-1995, the full text of which is available with the Centre for Human Rights. The activities proposed in the programme have been extensively discussed with the Cambodian authorities and copies of the Programme submitted to the two co-Ministers of Foreign Affairs, Ministers of Justice, Information, Education, co-Ministers of the Interior as well as other senior officials of the Government.

235. The activities of the programme will have to be financed out of voluntary contributions made to the Trust Fund for Human Rights in Cambodia, which is to be administered by the Centre. To this end an appeal for funding the programme (for the amount of US$ 2,869,000) was launched by the Assistant Secretary-General for Human Rights on 29 November 1993.

236. In September 1993, the Centre for Human Rights requested that funds remaining in the UNTAC Trust Fund for an education programme in Cambodia (in the process of being liquidated) be transferred to the Centre in order to allow it to implement many of the activities described in its programme. The Controller wrote on 9 December 1993 to former donors of UNTAC funds requesting their approval to transfer the responsibility of managing the UNTAC's fund to the Centre for Human Rights. At the date of the preparation of this report, the funds had not been made available to the Centre.

237. The programme of activities was developed based upon an assessment by the Centre of continuing assistance needs in Cambodia at the conclusion of UNTAC's mandate. The main areas of the programme are briefly described below.

### 1. Building institutions and legal structures for human rights and democracy

238. In conformity with the mandate given to the Centre in paragraph 2 (d) and (e) of Commission resolution 1993/6, a major area of activity of the Centre is the assistance to the Cambodian Government, at its request, in the elaboration and implementation of national laws involving human rights issues, to ensure their compliance with international human rights standards.

239. Successful institution building also requires sensitizing to human rights issues those individuals who, because of their professional responsibilities, are in a position to affect human rights practices within Cambodian society. Creating awareness of human rights and educating public officials involved in policy development and implementation and those responsible for the formulation of laws is another focus of the Centre's programme aimed at strengthening the capacity of national authorities to guarantee respect for human rights.

240. The Centre has already started to provide assistance to the Human Rights and Reception of Complaints Commission of the National Assembly, an institution which was recently established and which, being the only national body expressly charged with a human rights mandate, could play a vital role in the promotion and protection of human rights in Cambodia. The cost of the activities envisaged under this aspect of the programme is US$ 362,700.

241. In accordance with paragraph 2 (b) of the resolution, another important area of activity of the Centre is the assistance to the Cambodian Government in meeting its international treaty obligations. While the incorporation in domestic law of the provisions contained in the international human rights treaties to which Cambodia is a party will be pursued through the assistance provided by the Centre to the Government for the drafting of legislation, specific assistance to the Government in the preparation of reports for submission to the human rights treaty bodies is also a crucial element of the Centre's programme. Six of the international instruments to which Cambodia is a Party provide for the submission of periodic reports to the relevant monitoring bodies. Deadlines for the presentation of these reports by Cambodia are imminent and some reports are even overdue. The Cambodian Government will need to develop expertise for the preparation of reports consistent with the guidelines provided by the treaty bodies and will be assisted for this purpose by the Centre.

### 2. Securing a system for the administration of justice consistent with international standards

242. Assistance for the strengthening of the Cambodian system for the administration of justice, in accordance with paragraph 2 (f) of Commission resolution 1993/6, is another vital element of the Centre's activities. The Centre's activities in this area are directed towards all key actors involved in the administration of justice (judges, lawyers, paralegals, police and prison officials), with the purpose of cooperating in Cambodia's efforts to secure a system for the administration of justice which is consistent with relevant international standards.

243. At the judicial level, these activities include a judicial mentor programme targeted at judges at the provincial level; specialized judicial training in independent and impartial judicial functioning and in human rights in the administration of justice; assistance for introduction into the Cambodian justice system of the United Nations Guidelines on the Role of Prosecutors; the temporary placement of Cambodian judges and prosecutors with counterpart institutions in other democratic jurisdictions; training of human rights defenders and paralegals; provision of documentation and literature on international human rights to the courts; and the provision of documentation and training to law professors and scholarships to qualified Cambodian students to pursue legal studies.

244. This programme component also includes specialized training for police on their role in a democratic State, international standards on the proper treatment of prisoners and detainees and human rights in the administration of justice. The provision of advisory services for the reform of prison legislation and regulation is a further important element, as is assistance in the establishment, in cooperation with the Government, of a National Institute

of Criminal Justice, to be charged with responsibility for developing and implementing research and training programmes in human rights for police and prison personnel. The cost of the activities envisaged under this component of the programme is US$ 993,000.

### 3. Strengthening of civil society, including through non-governmental organizations

245. A relatively recent development in Cambodia has been the creation of local human rights organizations, which have been very active in various areas during the transitional period. Thanks to international support, these organizations have progressively strengthened their resources and capacity and today provide a crucial vehicle to gather public understanding and support for human rights in the country. Support to these groups, as requested by paragraph 2 (c) of Commission resolution 1993/6, is a central aspect of the Centre's programme. This includes funding, training, documentation and capacity-building activities. Particular efforts are also needed to introduce Cambodian non-governmental human rights organizations to the United Nations system for the protection of human rights and how to contribute to and benefit from its effective functioning. The cost of the activities envisaged under this component of the programme is US$ 593,300.

### 4. Raising awareness of human rights and encouraging popular support for democratic reforms and institutions

246. The Centre's programme also devotes special attention to other important components of the civil society, such as the media, women's associations, labour associations, religious groups and other kinds of community organizations. Efforts must be made to develop the awareness of these groups on the role they can play in a democratic society and on their capacity to effectively perform that role.

247. Broad and well-planned education and information programmes aimed at fostering respect for and understanding of human rights among the general public, in conformity with paragraph 2 (a) of Commission resolution 1993/6, are another major component of the Centre's programme. Indeed, these are essential to create popular support for the realization of democratic reforms and the establishment of democratic institutions, which is the only guarantee of success of the new Cambodian democratic process.

248. It is essential that these programmes be tailored to the specific needs of the country and to its distinct cultures, make use of the communication means which are most appropriate in the Cambodian context and be accessible to various levels of literacy.

249. In order to develop a genuine and extensive culture of human rights, efforts have also to be devoted to the education of the youngest generation to human rights concepts and democratic values, which is another focus of the Centre's programme. The cost of the activities envisaged under the component of the programme "Raising awareness of human rights and encouraging popular support for democratic reforms and institutions" is US$ 301,700.

### 5. Strengthening of human rights activities at the local and provincial levels

250. In order to perform better the above-mentioned activities, the Centre aims to establish a network of human rights officers in the 21 Cambodian provinces. Their primary functions would be to provide support, training and information services to the local communities, and particularly to NGOs, which would otherwise be working in isolation. The liaison officers would also assist the work of the Centre by gathering information and reporting about the human rights situation in their respective provinces. The cost of the activities envisaged under this component of the programme is US$ 618,000.

251. The Cambodia office of the United Nations Centre for Human Rights is implementing some of the activities described above, in particular those that could be implemented without financial implications. Contacts have been established by the Centre with other United Nations agencies involved in Cambodia for the purpose of coordinating their respective programmes. Many crucial activities under the Centre's programme, however, cannot be implemented without funding. Accordingly, it is imperative that the transfer of funds remaining in the UNTAC Trust Fund for an Education Programme in Cambodia into the Centre's Trust Fund for Human Rights in Cambodia be effected at once.

## D. Activities implemented by the Office (October 1993 - January 1994)

252. The Cambodia office of the United Nations Centre for Human Rights has carried out the following activities for the creation and strengthening of national institutions and legal structures for the promotion and protection of human rights and democracy, and securing a system for the administration of justice consistent with international human rights standards.

253. Technical assistance and advisory services are being provided to the recently established Human Rights Commission of the National Assembly, inter alia, in the:

(a) Drafting of the Commission's mandate, with a commentary thereon, taking into consideration the political, historical and social circumstances of Cambodia and the experience of parliamentary human rights bodies in other countries;

(b) Drafting of guidelines for receiving, dealing with and responding to complaints of human rights violations;

(c) Drafting of the rules and procedures to be adopted by the Commission in its functioning;

(d) Provision of documentation on human rights, including the reports to the United Nations Commission on Human Rights;

(e) Developing procedures to investigate human rights violations;

(f) Drafting of laws on the press and demonstrations.

254. While these activities will continue, further forms of assistance will be necessary. Members of similar parliamentary bodies from other countries, preferably from the Asian region, will be brought to Cambodia to provide international and comparative guidance to the Human Rights Commission in its effective functioning. General and specialized documentation on human rights will be provided to the Commission to ensure access to information about international standards relevant to the performance of its duties.

255. Assistance has also been provided to the Commission on Legislation of the National Assembly in the drafting of its mandate. The Commission has also invited the Cambodia office of the United Nations Centre for Human Rights to offer advice on the ways of implementing its mandate, and assisted in the creation of a legal drafting office. The Cambodia Office of the United Nations Centre for Human Rights considers the establishment of this office as an imperative and is making appropriate efforts to assist in the establishment of the same.

256. The Cambodia office of the United Nations Centre for Human Rights has established close links with the ministries which directly deal with administration of justice, in particular the Ministries of Justice and the Interior.

257. A seminar on the administration of justice was organized in January 1994 by the Cambodia office of the United Nations Centre for Human Rights to identify the main problems relating to the implementation of criminal law, with particular reference to the coordination between the police and the courts. Participants included senior officers from the Ministry of the Interior, judges and prosecutors nominated by the Ministry of Justice including the Chief Justice of the Supreme Court, and members of Parliament including the Chairperson of the Human Rights Commission of the National Assembly. At the end of the seminar, the participants made a joint statement on the basic areas which need immediate attention to revitalize the administration of justice.

258. The Cambodia office of the United Nations Centre for Human Rights continues to assist defenders in performing their functions in the courts in an effective manner. Further to the routine relationship that has been established with the Cambodian Defenders Association, a seminar was held to identify and discuss solutions to major problems of the defenders.

259. In order to enhance public awareness and assist in the formation of informed public opinion on the nature of reforms that are to take place in Cambodia, the Cambodia office of the United Nations Centre for Human Rights has worked with the NGOs to help them understand some of the issues involved. A seminar was organized on various aspects of the administration of justice for this purpose.

260. Integral to the Cambodia office of the United Nations Centre for Human Rights' mandate is assistance and advice to the Cambodian Government in ensuring conformity of laws with human rights including the review of:

(a) Constitution of the Kingdom of Cambodia, 1993;

(b) SoC press law, 1993;

(c) Proposed law on the press;

(d) Internal Rules of the National Assembly;

(e) Criminal procedure;

(f) International provisions;

(g) Directives 001 and 002 relating to the judiciary and police;

(h) SoC demonstration law, 1991;

(i) Draft immigration law;

(j) Provisions relating to nationality and granting of identity cards.

261. As mentioned above, the Cambodia office of the United Nations Centre for Human Rights provides educational and technical assistance to the Government; assists the Government of Cambodia in meeting its obligations under human rights instruments to which it is signatory to; provides support to human rights groups; and assists with the training of persons responsible for the administration of justice. The Cambodia office of the United Nations Centre for Human Rights also provides and disseminates information about human rights to the public through the media, the creation of informational materials and the maintenance of a resource centre.

262. The Cambodia office of the United Nations Centre for Human Rights met with senior Ministry of the Justice and Ministry of Interior officials to arrange a series of training programmes within the criminal justice system, especially in the areas of police and prison reform. A country-wide programme of consultation and training will be undertaken in 13 prisons from March to July 1994. This will be followed by a seminar on reform of the prison system. A similar process of consultation and training will be conducted for the police system. Several local human rights NGOs have received permission to train police and the Cambodia office of the United Nations Centre for Human Rights is providing an eight-day training programme for these groups to assist their work.

263. The Cambodia office of the United Nations Centre for Human Rights has funded and is providing technical assistance to a local NGO to develop and produce a human rights curriculum for the primary and secondary school systems. It has provided advice on the principles of curriculum drafting and

teaching theory. Technical assistance was also being given to an international NGO to develop a human rights curriculum to be used for training of international and local NGOs so they can incorporate human rights concepts into development and training programmes.

264. The Cambodia office of the United Nations Centre for Human Rights organized and conducted a two-day seminar on mediating land disputes on 15 and 16 December 1993. Over 30 participants, including the Chairman and Deputy Chairman of the Human Rights Commission of the National Assembly and the Deputy Chairman of the Legislation Drafting Commission, as well as members of a number of NGOs, participated.

265. A composite volume of international human rights standards, with references to the relevant human rights instruments, entitled "Guidelines on Criminal Justice", developed by United Nations Crime Prevention and Criminal Justice Branch, is currently being translated into Khmer. An expanded and updated version of Human Rights: A Compilation of International Instruments is also being translated.

266. In the area of information, local media have been kept informed of the activities of the Cambodia office of the United Nations Centre for Human Rights. Training and assistance will be given to Cambodian human rights organizations to develop their information programmes and enhance their public relations activities. Women's groups will be a special focus of these activities. A resource centre of United Nations, NGO and other human rights publications is also being established on the premises of the Cambodia office of the United Nations Centre for Human Rights.

Support to Non-governmental organizations

267. There are some 30 local NGOs active in the human rights area. Providing support to these organizations is an important focus. The Cambodia office of the United Nations Centre for Human Rights provides advice and technical assistance including:

(a) Development of a country-wide liaison service in cooperation with local NGOs. Thirty liaison officers will be placed throughout the country in order, amongst other things, to assist local NGOs, provide training and gather information;

(b) Provision of support through attendance at all meetings of the four coordination committees of the Human Rights Task Force to assist in the coordination of activities in the areas of monitoring, education, women's issues and development; and

(c) A seminar series on "Human Rights and Development" to begin on 28 February 1994.

268. In November 1993, the Cambodia office of the United Nations Centre for Human Rights organized a two-day workshop on United Nations monitoring procedures for representatives of Cambodian non-governmental organizations.

269. The Cambodia office of the United Nations Centre for Human Rights also maintains contact, advises and supports the agencies that have received funding under the "Trust Fund for a Human Rights Education Programme in Cambodia", established by the Human Rights Component of UNTAC.

270. The Cambodia office of the United Nations Centre for Human Rights assisted in the planning of International Human Rights Day celebrations in Cambodia to commemorate the forty-fifth anniversary of the Universal Declaration of Human Rights. The office operated an information booth at the event and handed out information material including posters and pamphlets to the public. The office was presented with a human rights prize at the ceremony for its work in Cambodia.

271. Assistance to the Government to meet its reporting obligations under international human rights instruments it has acceded to include:

(a) Sending two officials from the Ministry of Foreign Affairs and one from the Ministry of Justice to Geneva to undergo a preparatory training programme in reporting in December 1993;

(b) The planning of a seminar for senior officials to discuss reporting procedures and form an interdepartmental committee to manage same; and

(c) Translation of the Centre for Human Rights' Manual on Human Rights Reporting into Khmer.

## Notes

1/ "Transition to What? Cambodia, UNTAC and the Peace Process", by Grant Curtis, discussion paper, United Nations Research Institute for Social Development (UNRISD), November 1993.

2/ Australia, Brunei Darussalam, Cambodia, Canada, China, France, India, Indonesia, Japan, the Lao People's Democratic Republic, Malaysia, the Philippines, Singapore, Thailand, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, the United States of America, Viet Nam and Yugoslavia.

3/ The agreements include an Agreement on a Comprehensive Political Settlement of the Cambodian Conflict, an Agreement Concerning the Sovereignty, Independence, Territorial Integrity and Inviolability, Neutrality and National Unity of Cambodia, as well as a Declaration on the Rehabilitation and Reconstruction of Cambodia.

4/ Final Act of the Paris Conference, article 10. France and Indonesia were the co-Presidents of the Conference.

5/ On 18 October 1991, a week before the signing of the Paris Agreements, the ruling party changed its named from the People's Revolutionary Party of Kampuchea (PRPK) to the Cambodian People's Party (CPP). It adopted a new

platform based on a multi-party democratic political system and a market economy. New freedoms were proclaimed including the freedom of expression, of press and of association.

6/ As an example of official admission of the use of land-mines, recent PDK radio broadcasts state that the NADK are fighting government forces with mines as well as other assorted weapons.

7/ It is difficult to quantify the economic and social situation of Cambodia because of the dearth of official statistics. Those which are available can only be used as approximations of the situation.

8/ "Rebuilding Quality Education and Training in Cambodia", Ministry of Education, Kingdom of Cambodia, 1994.

9/ UNRISD, op. cit.

10/ "Comprehensive Paper on Cambodia", United Nations Development Programme (UNDP), April 1992.

11/ "Cambodia: The Situation of Children and Women", UNICEF, 1990.

12/ UNRISD, op. cit.

13/ "The Social Consequences for the Peace Process in Cambodia: Recommendations and Findings from an UNRISD Workshop", Geneva, April 1993; See also UNRISD, ibid.

14/ "Cambodia: Agenda for Rehabilitation and Reconstruction", World Bank, June 1992.

15/ "Cambodia: Health Situation", Ministry of Health (Planning and Statistics Unit), September 1993.

16/ Ministry of Education, January, 1994.

17/ Ibid.

18/ In the Khmer language, "Khmer citizens" is commonly translated as prochea pul rwat khmer. "Khmer people" is commonly translated as prochea reas khmer and "all persons" as chun krup roup. Several ambiguities exist in the Constitution in the use of these words. For example, the official English translation of article 32 (text quoted in paragraph 132) uses the term "Khmer citizen", whereas the official Khmer version uses the term chun krup roup ("all persons"). The same anomaly exists with respect to article 38, in which the official Khmer and English texts use different terms. All the other provisions of chapter 3 of the Constitution, both English and Khmer, use the term "Khmer citizens". The confusion is exacerbated by the fact that the Constitution also uses the formulation "citizens of Khmer nationality" (as opposed to "Khmer citizens") in article 44.

19/ Consultations between the courts and the Ministry of Justice are not new, but have existed for many years. It is necessary to understand the historical factors behind this in order to be able to advocate reforms in the Cambodian judicial system. Until the establishment of the Supreme Court, the Ministry of Justice acted as the "Appeal Court" from the provincial courts. This was in part due to the lack of adequate qualified persons to staff superior courts. Even after the establishment of the Supreme Court, the Ministry of Justice exercised control over all courts, including the Supreme Court. The decisions of the Supreme Court could be appealed under the SoC regime to the Legislative Committee of the National Assembly, which was chaired by the Vice-Minister of Justice, and from thereon to the Permanent Committee of the National Assembly. Thus, there was a tradition of judicial subservience to the Ministry of Justice. This tradition created patterns of behaviour which are difficult to change. For instance, the Supreme Court made the following observation in a report to the National Assembly in 1989: "... the 'People's Supreme Court'... is not competent to resolve the suits (sic) itself, has only examined them ... so that they may be turned over to the competent organs to be dealt with. This is because we feel that the work of receiving and resolving suits is a matter of ideology. It is not only a matter of expanding and strengthening socialist legality, but is inseparably involved with political problems, viz., it makes the people have a strong faith in our regime." See Report on the activities of the People's Supreme Court during the first semester of 1989, presented to the seventeenth session of the First National Assembly.

20/ It is useful to quote the following paragraph from the report of the Supreme Court to the National Assembly in 1991: "Some provincial and municipal People's Courts are compelled by their provincial and municipal [administrative] committees to report about every aspect of every matter in both criminal and civil cases. If they want to convene hearings, the case file must be taken in and put by them [for approval]. Those which they like and strike their fancy are the ones that are allowed to be opened. Those which don't please them personally get bogged down. This kind of thing is a violation of the stipulations on assignment of duties and the work system of provincial and municipal committees in the 16th Decision of the Centre dated 16 May 1986 from the Party Central Committee, in which clear-cut instructions are given with regard to the duties of provincial and municipal committees and the work of courts." See Report on actions in implementation of specialized tasks by the Supreme People's Court during the first semester of 1991, presented to the twenty-first session of the First Term of the National Assembly.

Annex I

PROGRAMME OF WORK OF THE SPECIAL REPRESENTATIVE DURING HIS FIRST MISSION (VISIT TO GENEVA, PARIS, BATTAMBANG AND BANGKOK)

| Date | Places visited and persons interviewed |
|---|---|
| | Geneva |
| 12 January 1994 | Meeting with the Assistant Secretary-General for Human Rights and staff of the Centre for Human Rights |
| | Meeting with Mr. D. McNamara, former Director, UNTAC Human Rights Component |
| | Meeting with NGOs (Amnesty International, International Commission of Jurists, Ligue cambodgienne pour la promotion et la défense des droits de l'homme (Cambodian League for the Promotion and Protection of Human Rights) (LICADHO), World Organization against Torture) |
| 13 January 1994 | Meeting with co-sponsors of resolution 1993/6 of the Commission on Human Rights (Argentina, Australia, Austria, Canada, Chile, Finland, France, Germany, Indonesia, Japan, Malaysia, Netherlands, New Zealand, Norway, Philippines, Republic of Korea, Russian Federation, Singapore, Sweden, Thailand, United States of America) |
| | Meeting with United Nations bodies, specialized agencies and other organizations (UNHCR, UNDP, UNESCO, ILO, ICRC, IPU) |
| 14 January 1994 | Paris |
| | Meeting with H.E. Madame L. Michaux-Chevry Ministre délégué à l'action humanitaire et aux droits de l'homme du Gouvernement français |

Present at the meeting:

M. Keller, Directeur, Cabinet du Ministre délégué; M. Lapouge; M. Talpain, Conseiller technique au Cabinet du Ministre délégué; M. Mettra, Sous-Directeur des droits de l'homme des questions humanitaires et sociales internationales; Mme de Bourmont, Sous-Directeur d'Asie du sud-est, Ministre des affaires étrangères; M. Roudant, Chef du Service de l'action humanitaire; Mme Collet, Direction des Nations Unies et des organisations internationales.

Meeting with the representative of ADHOC (Association droits de l'homme au Cambodge).

Meeting with M. C. Blanchmaison, Directeur d'Asie et d'Océanie, Ministère des affaires étrangères.

Meeting with M. Jean-Pierre Lafon, Directeur des Nations Unies et des organisations internationales, Ministère des affaires étrangères.

Meeting with representatives of the International Federation of Human Rights.

Meeting with M. Louis Joinet, Chargé de Mission auprès du Président de la République française.

21 January 1994 — Phnom Penh

Meeting with staff of the Cambodia office of United Nations Centre for Human Rights

22 January 1994 — Meeting with representatives of the following human rights NGOs:

Cambodian Institute of Human Rights
Association des droits de l'homme au Cambodge (Cambodian Human Rights Association) (ADHOC)
Cambodian Defenders Association
Khmer Kampuchea Krom Association
Human Rights Task Force of Cambodia
Cambodian Human Rights Trainers Organization
Human Rights Vigilants of Cambodia
Ponleu Khmer

Ligue cambodgienne pour la défense des droits de l'homme et du citoyen (LCDHC)
Ligue cambodgienne pour la promotion et la défense des droits de l'homme (LICADHO)
Human Rights and Community Outreach Project

Meeting with following representatives of Diplomatic Corps in Phnom Penh:

H.E. Rep. Martin Colacott (Canada)
H.E. Ambassador Chandra Mohan Bhandari (India)
H.E. Ambassador Taufik Soedarbo (Indonesia)
H.E. Ambassador Youri Miakotnykh (Russia)
H.E. Ambassador Tran Huy Chuong (Viet Nam)
H.E. Ambassador Charles Twining (United States of America)
H.E. Ambassador John Scot Holloway (Australia)
H.E. Ambassador David Burns (United Kingdom)
Mr. Gérard Porcell, Chargé de la coopération (France)
Mr. Shinohara, Chargé d'affaires (Japan)

Mr. Fauzi Bin Daud, Counsellor, Embassy of Malaysia
Ms. Brigitte Ory, First Secretary (Germany)
Representative from the Embassy of the Kingdom of Thailand
Representative from the Embassy of the People's Republic of China
H.E. Julio A. Jeldres, Minister-Cabinet of His Majesty the King of Cambodia

Meeting with H.R.H. Norodom Sirivudh, Deputy Prime Minister and Minister for Foreign Affairs

23 January 1994

Battambang (Cambodia)

Mr. Dang Thung, Prison Director

Chea Dara, President, Ligue cambodgienne pour la promotion et la défense des droits de l'homme (LICADHO) office, Battambang Province

Som Kol, President, ADHOC office

Mr. Nil Non, Chairman, Battambang court

| | |
|---|---|
| 24 January 1994 | Phnom Penh |
| | Mr. Leong Chhay, Dean, Faculty of Law and Economics, University of Phnom Penh |
| | H.E. Sin Sen, Vice-Minister of the Interior |
| | H.E. Tea Chamrath, Co-Minister of Defence |
| | Mr. Oum Sarith, President of the Phnom Penh Municipal Court |
| | Meeting with representatives of the following United Nations agencies and international organizations: |
| | UNHCR, UNDP, UNICEF, UNESCO, WHO, ILO, ICRC |
| 25 January 1994 | H.E. Sar Kheng, Deputy Prime Minister and Co-Minister of the Interior and National Security |
| | Mr. Som Sophean, Director of King Sihanouk Hospital (and journalists) |
| | Mr. Nguyen Ngoc Sanh, President, Vietnamese Association |
| | H.R.H. Prince Norodom Ranariddh Varman, First Prime Minister |
| | Mr. Luy Chanphal, President, Cambodian Defenders' Association |
| 26 January 1994 | Mr. Kassie Neou, Director, Cambodian Institute for Human Rights |
| | Mr. Bala Chandran (journalist) |
| | Mr. Kem Sokha, Chairman of the Human Rights Commission of the National Assembly |

| | |
|---|---|
| 27 January 1994 | Mr. Thun Saray, President, ADHOC |
| | H.E. Ung Huot, Minister of Education |
| | H.E. Hun Sen, Second Prime Minister |
| | H.E. Ieng Mouly, Minister of Information |
| | Meeting with NGO Working Group for a Permanent International Tribunal |
| | H.E. Chem Sgnoun, Minister of Justice |
| | Press Conference |
| 28 January 1994 | Gérard Porcell (in charge of Overseas Cooperation between the Government of France and the Cambodian Government) |
| | H.E. You Hokry, Co-Minister of the Interior |
| | H.E. John Scot Holloway, Ambassador |
| | Mr. Yang, Chargé d'affaires, Embassy of the People's Republic of China |
| | Bangkok |
| | Mr. K. Supol, Deputy Director, International Organizations Department, Ministry of Foreign Affairs of Thailand |
| | Mr. Don Tramudwinai, Director General, East Asia Department, Ministry of Foreign Affairs of Thailand |

ANNEX II

LETTER DATED 6 NOVEMBER 1993 FROM THE ROYAL GOVERNMENT OF CAMBODIA ADDRESSED TO THE ASSISTANT SECRETARY-GENERAL FOR HUMAN RIGHTS

Sir,

We have the honour to acknowledge receipt of your letter of 5 October 1993 informing us, on behalf of the Secretary-General, of the content of resolution 1993/6 adopted by the United Nations Commission on Human Rights at its forty-ninth session, entitled "Situation of human rights in Cambodia".

The Royal Government of Cambodia has taken note of the content of the above-mentioned resolution, which requests the Secretary-General of the United Nations to ensure a continued United Nations human rights presence in Cambodia after the expiry of the mandate of the United Nations Transitional Authority in Cambodia, inter alia, through the operational presence of the Centre for Human Rights.

We have also noted that the resolution requests the Secretary-General to appoint a special representative to, inter alia, maintain contact with the Government and people of Cambodia; guide and coordinate the United Nations human rights presence in Cambodia; and assist the Government in the promotion and protection of human rights.

The Royal Government of Cambodia welcomes the initiative taken by the Commission on Human Rights and the efforts made by you personally in order to ensure continuity in activities for the promotion and protection of human rights through the establishment in Phnom Penh, of an office of the Centre for Human Rights, which has been operational since 1 October 1993.

Would you please advise the Secretary-General of the United Nations of the full consent of the Royal Government of Cambodia and assure him of its full cooperation in helping the Special Representative and the Centre for Human Rights to carry out their respective mandates.

Accept, Sir, the assurances of our highest consideration.

(Signed) Norodom Ranariddh
First Prime Minister
of the Royal Government
of Cambodia

(Signed) Hun Sen
Second Prime Minister
of the Royal Government
of Cambodia

---

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1994/73/Add.1
21 February 1994

Original: English

COMMISSION ON HUMAN RIGHTS
Fiftieth Session
Agenda item 19

# ADVISORY SERVICES IN THE FIELD OF HUMAN RIGHTS

## Report of the Special Representative of the Secretary-General, Mr. Michael Kirby, on the situation of human rights in Cambodia submitted pursuant to Commission on Human Rights Resolution 1993/6

Addendum*

* The present document contains the conclusions and recommendations of the Special Representative of the Secretary-General on the situation of human rights in Cambodia following his first mission to the country from 21 to 28 January 1994. The first part of his report will be issued subsequently as document E/CN.4/1994/73.

GE.94-11134 (E)

CONCLUSIONS AND RECOMMENDATIONS OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL ON THE SITUATION OF HUMAN RIGHTS IN CAMBODIA FOLLOWING HIS MISSION TO CAMBODIA FROM 21 TO 28 JANUARY 1994

## A. Conclusions

1. The Special Representative wishes to express his sincere appreciation to the Royal National Government of Cambodia for the full cooperation received during his mission, in particular in facilitating visits to various institutions such as prisons, courts and hospitals.

### 1. Important progress towards a civil society

2. Important progress in the respect for, and the protection of, human rights has been achieved in a comparatively short time. This is particularly so when considered against the background of the recent history of Cambodia which witnessed the terrible suffering of its people and grave derogations from basic human rights. Such progress includes:

(a) The Paris Peace Agreements of 1991;

(b) The creation of the Kingdom of Cambodia and the Proclamation of His Majesty Norodom Sihanouk Varman as King;

(c) The adoption of the Constitution embodying human rights provisions;

(d) The conduct of elections which were accepted as free and fair;

(e) The establishment of a representative, national coalition government; and

(f) The beginning of the process of building a civil society by:

(i) Strengthening the functioning of the National Assembly;

(ii) Establishing the Commission on Human Rights of the National Assembly;

(iii) Enactment of laws including adoption of Transitional Provisions (relating to the judiciary and criminal law) and their partial enforcement;

(iv) Training of officials involved in the administration of justice, including judges, prosecutors, law enforcement and prison officials;

(v) Improvement in the functioning of some courts;

(vi) Establishment of the Office of Defenders and their Association;

(vii) Creation and multiplication of NGOs;

(viii) Strengthening of systems of education, including universities, and health facilities;

(ix) Enabling greater freedom of movement;

(x) Facilitating the rights to peaceful assembly and demonstration; and

(xi) Growth of a free press.

## 2. The persisting problem of security which challenges human rights

3. Nevertheless, major problems remain. Most serious is the problem of security and instability caused by non-participation of the Party of Democratic Kampuchea (Khmer Rouge) in the process towards democratic government in Cambodia. This has led to an escalation of military confrontation between the democratically elected Government and the elements of the Khmer Rouge. Problems include:

(a) Laying of mines in large numbers (reportedly by all parties to the conflict) threatening the right to life, food, health, and limiting the freedom of movement throughout the country;

(b) Support for the Khmer Rouge either explicitly or tacitly by elements in foreign countries, especially the military. The Khmer Rouge could not survive without such support;

(c) Unjust treatment reportedly meted out to some Khmer Rouge defectors who have surrendered to government forces in answer to the call of the two Prime Ministers;

(d) Ready availability of mines, grenades and other weapons in markets throughout Cambodia;

(e) Reported abuse of power by some military and police, including threats to the right to life;

(f) Lack of effective and just means of resolution of complaints by civilians against military and police;

(g) Undermining and destabilizing the civil society because of an atmosphere of fear, and the resulting resistance to concepts of human rights amongst some members of the public;

(h) Diversion to the armed forces of scarce resources needed to provide for and safeguard economic, social, cultural, civil and political rights; and

(i) Failure to render accountable those responsible for major human rights violations, including those in power during successive regimes since 1970, responsible for war crimes, crimes against humanity and the crime of genocide.

### 3. The destruction of the infrastructures for the enforcement and realization of human rights

4. Other basic problems arise from the almost total destruction in the last 20 years of the infrastructures of a civil society necessary to realize and protect human rights and fundamental freedoms. Such problems include:

(a) Destruction of the health system. Many hospitals lack clean water, reliable electricity, pharmaceutical and other basic equipment and trained personnel. In addition, the sale of pharmaceuticals is not regulated in accordance with international health safeguards and those available are often false or beyond the date of effectiveness;

(b) Gross disruption of the education system. This was due to the closure or non-functioning of primary and secondary schools and the disorganization of the universities during 20 years of war, as well as the persecution of teachers, professors and other intellectuals during 1975 to 1978;

(c) Gross disruption of the economy and the social fabric caused by the total reorganization of the agricultural production, the destruction of the market system, 20 years of wars and international isolation of the country. This has led to widespread and unacceptably high levels of unemployment, prostitution, currency destabilization, inflation and internal displacement of the population; and

(d) Disruption of the justice system: after 20 years of war, the country has been deprived of the rule of law. The deprivations are still serious, evidenced by the lack of basic texts and the absence of a strong and independent judiciary which is properly trained and adequately paid. Cambodia also lacks military and police services, properly trained and which see their roles as the protectors of basic rights.

### 4. The approach adopted by the Special Representative and response of the Government

5. In implementing the mandate entrusted to him by the Commission on Human Rights, the approach of the Special Representative is and will be to be supportive of the Cambodian Government in implementing its international human rights obligations. He intends to assist in providing the necessary advisory services and technical assistance to reinforce the Government's efforts to uphold the rule of law and to build the necessary infrastructures for the promotion and protection of human rights.

6. As required by his mandate, the Special Representative intends to have regular contacts with the people of Cambodia. Within this context, during his first visit he had extensive consultations with Cambodian NGOs and also visited prisons and other national institutions in Phnom Penh and Battambang. He made extensive use of the mass media to reach out to larger segments of the Cambodian population. In future missions he intends to visit other provinces in order to assess the human rights situation in all parts of the country.

7. He intends to have regular consultations with relevant international bodies and to assist in coordinating the work of the United Nations in human rights activities in Cambodia. He will also maintain contacts with interested Member States.

8. The response of the Royal National Government of Cambodia has been fully cooperative. The Special Representative has received the full support of the Royal Government, in particular of His Royal Highness the First Prime Minister, Prince Norodom Ranariddh Varman, and His Excellency, the Second Prime Minister, Mr. Hun Sen. He met with most senior Ministers and high-ranking officials of the government responsible for the implementation of human rights matters at the national and provincial levels. The Government facilitated for the Special Representative a number of visits to courts, a hospital, a university and a prison and in the prison enabled private discussions with detainees.

9. The focus of the Special Representative's activities is to encourage and assist in implementing the programme of activities elaborated by the Office of the Centre for Human Rights in Cambodia. In this context he is particularly supportive of the activities already initiated in the areas of institution-building, training, legislative drafting and assistance in reporting obligations under the international conventions to which Cambodia is a party. He wishes to emphasize to the Commission that the activities of the Office should not be restricted to Phnom Penh, but to be effective, must reach out to the provinces of Cambodia.

10. The Special Representative welcomes the establishment of the Human Rights Commission of the National Assembly. Taking into account the Cambodian context, in particular the absence of a fully established and independent judiciary, the Human Rights Commission is a vital institution for the promotion and protection of human rights, to supplement the effects of other institutions, including the courts.

11. The Special Representative supports and encourages the efforts of NGOs and other citizens involved in human rights activities in Cambodia.

## 5. The priority areas requiring urgent attention

12. The areas of activities which require urgent attention include:

(a) The devotion of proper resources for hospitals, schools, courts and for the defence of cultural treasures, especially Angkor Wat;

(b) The support of the National Assembly Human Rights Commission including financial assistance for a proper secretariat, equipment and training;

(c) The enactment of laws and related activities in specially urgent areas, for example:

(i) Establishment of the Constitutional Council;

(ii) Establishment within the administration of justice of the Supreme Council of Magistracy, a Court of Appeal and a functioning Supreme Court;

(iii) Enactment of the reformed land law;

(iv) Enactment of migration and citizenship laws;

(v) Enactment of a press law, guaranteeing free expression and to replace the State of Cambodia (SoC) law;

(vi) Enactment of a law guaranteeing peaceful assembly and demonstration to replace State of Cambodia (SoC) law; and

(d) The implementation of training programmes aimed at the promotion and protection of civil rights:

(i) Training police and military in their role in implementing relevant constitutional provisions and human rights;

(ii) Training of lawyers in relevant constitutional provisions and human rights;

(iii) Training of judges in relevant constitutional provisions and human rights; and

(iv) Training of citizens, through the media and schools, in relevant constitutional provisions and human rights;

(e) Ensuring true independence of the judiciary by guaranteeing:

(i) Proper salaries;

(ii) Enforcement of the requirements of independence;

(iii) Neutral conduct of trials; and

(iv) Open conduct of trials.

## B. Recommendations

### 1. Right to health

13. There is an urgent need to upgrade the infrastructure and delivery of health services in Cambodia. Many, possibly most, health workers need to be retrained and their skills upgraded. Equipment, supplies and drugs that meet international standards need to be made available and better allocated and managed to reduce mortality, particularly resulting from malaria and tuberculosis. More funding is required from the central level to the provinces, districts and communes to strengthen the public health sector in its provision of basic health care to the people.

14. The Ministry of Health should continue its efforts towards a more centralized health system. The assistance of WHO and UNDP in this regard should continue and where possible, be supported by other United Nations agencies, bilateral assistance and NGOs.

15. The Ministry of Health, with international assistance, should continue its efforts to develop programmes for the prevention of crippling diseases and illnesses. Adequate services for the rehabilitation, care and training of handicapped and disabled, including victims of land-mines, should be developed.

16. Priority should be given by the Government of Cambodia to public health campaigns to provide education concerning the use of safe water. Such campaigns should also address the prevention of the transmission of HIV/AIDS and the dangers of the spread of cigarette smoking in the Cambodian population.

## 2. Cultural rights

17. The right of Cambodians to enjoy the cultural heritage of Angkor Wat is threatened by looting of monuments and archaeological sites, and by illicit international traffic in Khmer treasures. A comprehensive plan for zoning and environmental management of the Angkor site needs to be immediately implemented and strictly enforced.

18. Member States must make greater efforts to prevent illicit trafficking in Khmer artifacts. The Special Representative therefore calls on all nations, and particularly countries in the region, to ratify and effectively implement the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (ratified by Cambodia on 26 September 1972)

## 3. Education, in luding legal education

19. There is an urgent need to reinforce the infrastructure of Cambodian primary and secondary education to ensure universal literacy and the opportunity for advancement in society. It is already clear that the current levels of enrolment and retention in schools will delay the rebuilding of the Cambodian economy and thereby retard the establishment of the conditions in which human rights will flourish and be secure. The highest priority should therefore be given to the reopening of schools, the building of new schools, the training of teachers, the education of large numbers of the population in at least one language in addition to Khmer, and the assurance of equal opportunity in education for vulnerable groups.

20. The Ministry of Education should proceed, as a matter of priority, with its plan to collect and publish statistics on the number of children at every level of education, showing a breakdown of the number of female students. The statistics should also provide data on educational retention so that trends, needs and priorities may be monitored by the Ministry, the Cambodia office of the United Nations Centre for Human Rights, the United Nations agencies (including UNESCO and UNICEF) and other interested organizations.

21. The Faculty of Law and Economics of the University of Phnom Penh should, without delay, consider the inclusion in its curriculum of courses in applicable constitutional and international human rights law for the training of lawyers, both in the preparatory and subsequent years. Such courses should not be confined to the study of the human rights law of any particular country but should be carefully designed having regard to:

(a) The Constitution of Cambodia and its provisions for the protection of fundamental human rights;

(b) The other laws of Cambodia relevant to human rights;

(c) The provisions of international human rights instruments to which Cambodia is a party; and

(d) Other relevant international law and practice.

22. The Cambodia office of the United Nations Centre for Human Rights should offer its assistance to the Faculty of Law and Economics by:

(a) The provision to the Faculty of human rights and other texts, including those translated into Khmer; and

(b) The arrangement of workshops for students and staff in relevant legal principles. At least one such workshop should be organized by the Cambodia office of the United Nations Centre for Human Rights during 1994 to which staff and students of the Faculty should be invited.

23. In the event that a second school of law is established in Cambodia, the Cambodia office of the United Nations Centre for Human Rights should make contact with those responsible for the design and content of the curriculum in that school to ensure that it integrates relevant constitutional and international human rights law into its courses.

24. The system currently followed in the Faculty of Law and Economics in Phnom Penh results in the elimination of large numbers of students at the end of the preparatory year following matriculation. Consideration should be given by the Faculty of Law and Economics, in consultation with the Cambodia office of the United Nations Centre for Human Rights, to avoid such wastage and allow at least some of the students who have been eliminated after the preparatory year to be awarded a diploma or a certificate of legal studies. For many years in the future there will be a shortage of trained judges and lawyers in Cambodia. The need for paralegals to perform work in relation to the assistance of persons before the courts, tribunals, commissions and other bodies in Cambodia could be met in part if some qualification, short of a full legal degree, were recognized. Such qualification should include basic instruction in constitutional and international human rights law.

25. The proposal of the First Prime Minister, HRH Prince Norodom Ranariddh Varman, for general human rights information and education is strongly endorsed. The Cambodia office of the United Nations Centre for Human Rights should explore with the First Prime Minister's office ways in which members of the Government, from all political parties, could be involved in this process.

The distribution of simplified information in Khmer, and in languages of ethnic minorities living in Cambodia, concerning the constitutional principles and human rights standards should be encouraged by the Cambodia office of the United Nations Centre for Human Rights. In this work, the Cambodia office should cooperate closely with the Government, media and relevant NGOs. Special attention should be paid to the introduction of human rights education in:

(a) General schooling, both at primary and secondary levels; and

(b) Education of relevant specialized groups, such as members of the National Assembly, judges, prosecutors, police, military, prison officials and other public officials.

### 4. Judicial independence and the rule of law

26. A code of judicial practice or other law should be adopted providing for the effective assurance of judicial independence and integrity in Cambodia. Such a law should provide:

(a) That judges should not consult or have contact with any ministerial official concerning particular cases, except in open court and with the approval of both parties or their representatives. The alleged practice of judges consulting with the Ministry of Justice in private about the determination of cases either before, during or after trial should cease forthwith;

(b) That judges should not accept any gift, present, gratuity or benefit of any kind from, or on behalf of, any litigant in their court whether before or after decision. A gift before decision which may influence the decision deprives a party of the fundamental human right to be judged by a manifestly independent and impartial tribunal, and may amount to corruption. A gift after decision, even if it did not influence the decision, may create an impression in the losing party and the community that the judge was influenced by the hope or prospect of such a benefit;

(c) A procedure which is just to the complainant and the judge for the investigation of complaints against judges in respect of the performance of their judicial duties; and

(d) A procedure for the removal from office of judges found, by appropriately stringent standards, to be guilty of corruption or misconduct in a way relevant to their office or found to be suffering from a proved incapacity to perform judicial functions.

27. The present salaries of judges of municipal and provincial courts (reported to be US$ 20 per month) are wholly inadequate. They do not provide sufficiently for the sustenance and support of a judge and his/her family. Such low salaries make it almost impossible for judges to be independent. They expose judges to the temptation of corruption and the necessity to rely upon gifts, etc. which are incompatible with judicial office. Means should urgently be found to provide judges in Cambodia with salaries and other benefits of office sufficient to remove the exposure of judges to temptations

of corruption. Such means would serve to recognize the difficulty and importance of the work of judges in building a society based on the rule of law. Without an incorruptible judiciary, the rule of law will not take root in Cambodia.

28. All Cambodian judges should be supplied, upon appointment, with:

(a) Copies of the Constitution of Cambodia, the international human rights instruments to which Cambodia is a party and other relevant materials, in Khmer and in any United Nations official languages as desired; and

(b) Copies, in Khmer and any United Nations official languages as desired, of the relevant principles for the independence of the judiciary, including the Basic Principles on the Independence of the Judiciary adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan, Italy in 1985 and endorsed by the General Assembly in its resolution 40/32 of 29 November 1985 and the draft declaration on the independence of justice.

29. The Cambodia office of the United Nations Centre for Human Rights should continue to cooperate with the judiciary in the facilitation of:

(a) Translations into Khmer of basic texts, including the above;

(b) Workshops for the instruction and updating of judicial education on basic constitutional and human rights law; and

(c) Supplies to courthouses throughout Cambodia of basic texts and relevant information. The possibility of a human rights newsletter for the judiciary, Government and NGOs should be considered, if funds permit.

30. The judiciary cannot perform its high constitutional function without proper salaries, facilities, equipment, staff and other resources. Judges complained to the Special Representative about the lack of rudimentary resources, including the paper necessary to record judicial decisions. Such facilities should be provided without delay.

31. The recommendation of the seminar on administration of justice for senior officials nominated by the Ministries of Justice and the Interior, organized by the Cambodia office of the United Nations Centre for Human Rights, 11-17 January 1994, that the courts be given appropriate budgetary allocations for their functions, is strongly endorsed. The Cambodia office of the United Nations Centre for Human Rights should also explore ways in which the equipment and basic facilities available to judges could be improved without delay and make recommendations to this end for a later report by the Special Representative.

32. The Cambodia office of the United Nations Centre for Human Rights, in discussion with the Supreme Council of Magistracy, once established, should explore with the Ministry of Justice the feasibility of implementing a scheme of judicial mentors. Under such a scheme, judicial officers from other countries with a tradition of incorruptibility and independence could participate as resource persons in judicial chambers. They could also work

with relevant ministries, officials involved in the legal system and NGOs, by providing advice and information on analogous solutions from their countries and by drafting legal documents, codes of practice, etc.

## 5. Fair and open trial

33. The judiciary and the relevant ministries should take steps to ensure that:

(a) Article 13 of the Transitional Provisions providing for the bringing of every accused person before a judge within 48 hours of arrest should be strictly enforced;

(b) Article 10 of the Transitional Provisions should be strictly enforced to ensure that no person held in custody is denied the assistance of legal representation for a long period. Administrative arrangements should be made without delay to provide all persons in prisons with a notification of their rights and of practical ways of taking advantage of them;

(c) Article 17 of the Transitional Provisions should be strictly enforced so that the accused's defender can, without delay and as of right, without need of special or additional permission of a judge or any other person, have access to the accused's file. Consideration should be given to enlarging this right to permit the defender, at reasonable times upon reasonable notice in confidential circumstances, to have access to the client held in custody for instruction and the preparation of the person's trial or appeal;

(d) The provisions of Article 14 of the Transitional Provisions should be strictly enforced so that no person's pre-trial detention exceeds four months. If the trial cannot be brought on in this time, the accused must be admitted to bail or released. Arrangements should be made by the judiciary for:

(i) Priority of hearing to be given to cases where the accused confesses to the crime charged and must appear only for sentencing;

(ii) Priority of hearing to be given to simple contested cases ready for trial;

(iii) Priority of hearing to be given to urgent cases including accused persons who are juveniles, first offenders, persons charged with minor offences, pregnant women, mothers of young children, offenders who are sick or old or otherwise deserving of priority. Systems for the monitoring of cases should be established to ensure equitable treatment of cases under investigation and awaiting hearing;

(e) The notification to prisoners of the likely time for the hearing of their proceedings with due notice prior to the assigned date of trial or appeal;

(f) The equality of treatment in examination of witnesses on behalf of the accused as well as the prosecutor. The reported practice of permitting the latter when denying the former must cease. The accused must be permitted, where it is relevant, to examine orally those who make the accusation;

(g) The accused must be afforded the opportunity of being tried with a defender in the presence of the witnesses called against him or her. In the absence of informed consent on the part of the accused, a criminal trial or appeal may not be conducted based solely on documentation received by the judge from the police or the prosecutor. The judge must hear both sides before deciding the case. The accused and/or the defender must be given the opportunity to be heard before any decision is made on whether the accusation has been proved and before any sentence is imposed;

(h) Judges must not consult officers of the Ministry of Justice or any other person or body while a case is before them. This practice must cease immediately, since it is incompatible with judicial independence. If necessary, the judge might request assistance from the Ministry to be given in open court in the presence of the accused and any defender and subject to a right of contradiction and comment by any party to the proceedings;

(i) In civil cases, litigants should be allowed by courts, as a matter of practice, to have the facility of legal advice and to have a civil consultant. The reported resistance to this facility on the part of the courts and the Ministry of Justice should cease; and

(j) All trials and appeals should be conducted in open court, in the presence of the accused. The media should be allowed access to such trials so that judges, whilst judging, may also be judged by the community for their lawfulness and fairness - both for their conduct of proceedings and for their decisions. Any derogations from the open administration of justice should be strictly limited, provided by law and ordered in public only for reasons given at the time. The reported practice of confining those allowed to attend some courts in Cambodia to those holding an invitation or summons from the court should be discontinued.

34. The foregoing are already provided by the laws of Cambodia. However, there have been many reported derogations. The reports appear to be reliable. It is highly desirable that, without delay, practice in Cambodia be brought in conformity with the laws and international human rights standards. The Cambodia office of the United Nations Centre for Human Rights should cooperate with the courts and the relevant ministries towards this end.

## 6. New laws: necessary practices

35. The Royal National Government of Cambodia should give priority to introducing laws - and the National Assembly to the enactment of laws - conforming to international human rights laws for the:

(a) Establishment of the Constitutional Council as envisaged by the Constitution, to facilitate constitutional review of bills and laws;

(b) Establishment of the Supreme Council of Magistracy as envisaged by the Constitution;

(c) Clarification of the rights and obligations of judicial independence;

(d) Creation/strengthening of the right to judicial remedies, in particular, the right to be physically produced in a court to be subject to the court's order (habeas corpus);

(e) Assurance of fair, neutral and just trials of criminal and civil cases in the courts;

(f) Efficient and just determination of disputed cases of claims to nationality and citizenship of Cambodia;

(g) Protection of freedom of the press and other media with due regard to proper restrictions necessary to uphold other basic human rights (e.g. reputation, privacy, freedom from discrimination);

(h) Protection of the rights of peaceful assembly, demonstration and the peaceful expression of views on political, social and like questions;

(i) Privileges and duties of non-governmental organizations established for social or charitable objectives, including for the advancement and defence of human rights;

(j) Just and peaceful resolution of land claims having regard to the need to remove:

(i) Uncertainties as to the ownership and right to possession of land as a result of decades of war and civil strife and competing claims; and

(ii) Risks of oppression, abuse of power and favouritism in the allocation of land amongst competing claimants and local authorities; and

(k) Establishment of a system of land registration and title, and assistance to that end by countries with such systems, is especially recommended having regard to the large number of such land disputes and the potential which they provide, if not quickly and justly resolved, for the rise of persisting conflict and lawlessness.

36. Upon the establishment of the Supreme Council of Magistracy, the Council should proceed without delay to the appointment of the members of the Court of Appeal in order to begin clearing the backlog of outstanding appeals awaiting hearing.

37. Rules of Court and practice guidelines should be made and other laws enacted providing for:

(a) The efficient and just conduct of the business of the courts;

(b) The ongoing training of judges including in relevant constitutional and human rights law;

(c) The provision of a right of audience to qualified members of the legal profession and other persons before the courts of Cambodia together with the duties, privileges and immunities of such persons; and

(d) The curricula for university and other courses for the training of members of the legal profession and others with rights of audience. Such curricula should include instruction in relevant constitutional and international human rights law.

38. As a matter of general practice, the drafting of laws should follow a transparent procedure, particularly at this phase of lawmaking in Cambodia where so many important laws must be drafted and enacted in a comparatively short time. The secret preparation of laws reduces the opportunity of NGOs, academics, other interested groups, individuals and the Cambodia office of the United Nations Centre for Human Rights, to make submissions and contributions to the form and content of laws having relevance to fundamental human rights. Upon the presentation of draft laws to the National Assembly, having relevance to human rights, such draft laws should be:

(a) Referred to the Human Rights Commission of the National Assembly for review of conformity with constitutional and international human rights law; and

(b) Provided to the relevant NGOs, academics, other interested groups, individuals and the Cambodia office of the United Nations Centre for Human Rights, for comment.

39. Such comment should be taken into account by the Government and the National Assembly in the consideration of such laws before final enactment and for the revision of such laws once enacted.

## 7. The police and military

40. The Cambodia office of the United Nations Centre for Human Rights, in cooperation with the Ministries of the Interior and Defence, should institute courses and reform of the current curricula of the armed forces and police of the Kingdom of Cambodia to ensure:

(a) A basic understanding of the requirements of the Cambodian Constitution and other laws, and of international human rights obligations accepted by Cambodia; and

(b) An appreciation of the vital role of the police and the military as protectors of basic human rights under the law and as guardians of the Constitution adopted for its people by the democratically elected members of the Constituent Assembly and proclaimed by His Majesty the King.

41. To supplement the remedies already provided by law, particularly judicial remedies, an independent complaints office should be created in addition to internal mechanisms that are already in place. Such an office should be

furnished with appropriate resources, held by a person of unquestioned integrity, and empowered to receive, investigate and quickly act upon complaints by persons in Cambodia concerning unlawful, unfair, oppressive or unreasonable conduct by any member of the police, military, prison system or other government service in Cambodia.

42. In addition to other legislation that may be in place, a law should be enacted governing the use of firearms by officers of the police and the military. Such law should regulate:

(a) The issuance, logging, return and secure deposit of firearms;

(b) The limited circumstances in which they may be used in relation to the civilian population - including the definition of the serious cases in which it is justified to use firearms against unarmed civilians in accordance with the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the United Nations;

(c) The need for warnings prior to use, including the use of warning shots;

(d) The provision of a full report after use;

(e) The provision of evidence in relation to use; and

(f) The provision of a complaints mechanism for investigating the alleged abuse of the use of firearms by officials and breach of the law.

## B. Prisons and other custodial detention

43. A system of scrutiny of prisons and the detainees therein should be initiated for Cambodia and a law should provide for:

(a) The monthly **delivery** by the head of each prison to the head of the judiciary in each province of a full list of all prisoners held in custody showing the date of original incarceration, the offence(s) charged or established, the length of detention, the date or estimated date of trial or sentence (if still to be conducted) and details of any prisoners discharged or removed from the prison in the month under report, including any prisoners who have died in custody;

(b) In the case of deaths in custody, a full medical report should be provided specifying the cause(s) of death;

(c) Regular visits to the prison by members of the judiciary to hear and determine:

(i) Complaints of offences against prison discipline on the part of prisoners;

(ii) Complaints by prisoners about their treatment in prison or the lawfulness of their detention.

44. The maintenance of unauthorized prisons or places of involuntary custody not provided for by law, whether by the military or police or other authorities, should be forbidden and steps taken without delay to close any such prisons or places of custody.

45. The law should provide for the dismantling or conversion of dark cells and the destruction of shackles and other instruments of inhumane treatment or punishment.

46. Defenders and other authorized representatives of prisoners held in custody should be entitled by law:

(a) At reasonable times without any special judicial order to have access to a prisoner held in custody, without the presence of custodial staff, to discuss with the prisoner the defence of the prisoner whether at trial or on sentence or the prosecution of an appeal or application for review following conviction and sentence; and

(b) To notify a particular prisoner or prisoners in general of the facilities provided for the defence of prisoners or the timely prosecution of appeals.

47. The law should provide that authorized members of NGOs should have regular access to prisons to inspect prison conditions and to converse with prisoners, both convicted and on remand, to ensure that prison conditions are humane and conform to international standards applicable in Cambodia.

48. Within the prison, the law should provide for:

(a) Separate detention of juveniles and adults and the accommodation of juveniles in separate facilities designed for their education, vocational training and welfare, as proposed by the Second Prime Minister of the Government;

(b) Separate detention of men and women, and the use of female custodial staff in areas where women are accommodated;

(c) Separate detention of prisoners awaiting trial and those already convicted;

(d) The provision to all prisoners of

(i) Adequate food and water;

(ii) Adequate facilities of recreation;

(iii) Adequate reading material, if so desired;

(iv) Adequate and appropriate medical treatment and regular medical checks, especially in relation to the presence of malaria and tuberculosis; and

(v) The facility of an interpreter, when required, for the preparation for trial or appeals.

(e) The notification to the prisoner upon reasonable request, and at least once in three months, of the likely date of the hearing of the prisoner's trial, sentence or appeal;

(f) The provision to each prisoner of the forms necessary for:

(i) The prosecution of an appeal;

(ii) The engagement of a defender or other representative; and

(iii) The prosecution of any complaint concerning treatment in custody.

49. Pending the adoption of a law providing for the above, the foregoing recommendations should be implemented as a matter of administrative practice. In each province, a member of the judiciary must be designated by the head of the judiciary as the judge in charge of scrutiny of prisons. That judge should exercise the right already conferred by law to visit all prisons in the province to perform the functions set out above.

50. Further suggestions for the improvement of prison conditions in Cambodia, to ensure their conformity with fundamental human rights, should be recommended by members of the judiciary to the Supreme Council of Magistracy for consideration. If approved, the suggestions should be submitted to the Government and the National Assembly, with a view to the adoption of appropriate laws following consideration by the Human Rights Commission of the National Assembly.

51. Courses of instruction for prison personnel should be organized by the relevant departments of the Ministry of the Interior. The Cambodia office of the United Nations Centre for Human Rights, other United Nations agencies and local NGOs should cooperate in such an effort. Courses should include instruction in constitutional and international human rights law with particular reference to the requirements governing the humane treatment of prisoners and the attainment of the United Nations Standard Minimum Rules for the Treatment of Prisoners.

## 9. Press law and freedom of expression

52. A new law for the regulation of freedom of expression in relation to the media (press, radio, television, etc.) should be enacted by the National Assembly as soon as possible. Such law should be compatible with the Constitution and applicable international human rights principles and should ensure continuance of the greatest possible freedom of expression compatible with the respect for other human rights (privacy, reputation, freedom from incitement to racial hatred, etc.) and with other limitations reasonably imposed by law and compatible with the necessities of a democratic society.

53. The draft law currently under consideration relating to the media should, before enactment by the National Assembly, be submitted for comment concerning its conformity to constitutional and applicable international human rights principles, to:

(a) The Human Rights Commission of the National Assembly, in accordance with the rules of the National Assembly;

(b) Relevant and interested NGOs which request the opportunity to comment; and

(c) The Cambodia office of the United Nations Centre for Human Rights.

54. Upon presentation of the draft law the Cambodia office of the United Nations Centre for Human Rights should organize a seminar to discuss the draft law with the participation of members of the National Assembly, government officials, representatives of the media, relevant NGOs, other interested agencies and individuals.

55. The media in Cambodia, which enjoy an unprecedented and high measure of freedom of expression, should ensure that they continue to enjoy that freedom, by adopting measures of self-regulation for:

(a) The redress of complaints outside the courts;

(b) The upholding of proper standards of journalism in matters of accuracy;

(c) The promotion of human rights, including racial and ethnic harmony, within the Kingdom of Cambodia.

## 10. Vulnerable Groups

56. There is an urgent need for enactment of laws to promote and protect the rights of women in the following areas:

(a) Labour law, covering both the private and public sectors;

(b) Family law, including provisions for child support; and

(c) Property law that respects the rights of women.

57. There is also a need to enforce:

(d) Constitutional provisions ensuring equal access to essential services such as education and health care;

(e) Criminal law, particularly with respect to sexual assault and domestic abuse.

58. The Royal National Government of Cambodia should ensure that it recognizes the special needs of women by:

(a) Ensuring, through public information and education campaigns, that women are made aware, as far as possible, of their rights and of the services that are available to them;

(b) Investigating and making all efforts to combat the exploitation of women particularly in regard to the sale and trafficking of women and children for the purposes of prostitution, labour exploitation and forced marriages; and

(c) Providing birth spacing and child care services.

59. The Cambodia office of the United Nations Centre for Human Rights should cooperate with other relevant United Nations agencies, NGOs and community organizations to promote the status of women particularly in the areas of labour, family, property and criminal laws. It should, where possible, lend its support and assistance to government initiatives in these areas.

60. The Cambodia office of UNCHR and UNICEF should continue to cooperate closely in order to assist the Government of Cambodia to:

(a) Develop legislation which reflects the provision of the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women;

(b) Better understand and further develop mechanisms to meet monitoring and reporting responsibilities;

(c) Establish legal systems and community networks for enforcement of laws designed to protect the rights of women and children;

(d) Protect the rights of juvenile delinquents; and

(e) Provide social communication and information through media campaigns and social mobilization activities in schools, villages and health care facilities.

61. The adoption of new citizenship and immigration laws in conformity with the human rights requirements of the Constitution, applicable international human rights instruments ratified by Cambodia and applicable international law should be enacted without delay. Such laws should provide for:

(a) The establishment of the criteria for the acquisition of citizenship and nationality of Cambodia;

(b) The proof of such citizenship and nationality required where claimed by an individual but disputed by the authorities of the Kingdom of Cambodia;

(c) The tribunal or court to resolve authoritatively, speedily and without undue formality all disputed claims to citizenship and nationality;

(d) The resolution of claims to refugee status;

(e) The humane treatment of persons held in custody pending the determination of disputed claims and, where appropriate, the release of such persons on conditions pending such determination;

(f) The sitting of the court or tribunal in or near centres where numerous disputed claimants reside or are held; and

(g) Humane procedures for the deportation of persons whose claim to citizenship and nationality are rejected.

62. The Government of Cambodia, in collaboration with the United Nations High Commissioner for Refugees, should carefully assess that food rations and other assistance provided, in a very efficient and coordinated manner, to Cambodian returnees do not run out.

63. The Human Rights Commission of the National Assembly should consider, as its resources and programme permit, the drafting of legislation for submission to the Government and the National Assembly:

(a) Forbidding discrimination against persons particularly on the grounds of race or ethnic origin;

(b) Forbidding and punishing the spread of racial hatred or hatred of any person on the ground of ethnic origin; and

(c) Providing redress to victims of such discrimination and hatred.

64. Upon receipt of a report from the Human Rights Commission of the National Assembly upon this topic, the Government and the National Assembly should give urgent priority to enactment, promotion and enforcement of such law.

65. There should be referred to the Human Rights Commission of the National Assembly for examination and report to the National Assembly and the Government the discriminatory provisions of Chapter Three of the Constitution. This chapter contains provisions discriminating against persons who are not Khmer citizens. Such provisions should be removed from the Constitution after due consideration and replaced by provisions ensuring equal rights to all persons within the territory of Cambodia, regardless of ethnicity or nationality. Such altered provision should conform to Cambodia's obligations under relevant international human rights instruments.

66. The Government should consider developing information and education programmes based on principles of racial equality, ethnic harmony and non-discrimination for the general public, schools, community groups, NGOs and others.

## 11. Human Rights Commission of the National Assembly

67. The Human Rights Commission of the National Assembly of Cambodia requires the highest possible support of the Royal National Government of Cambodia, the National Assembly and the international community to carry out its tasks in an

independent and effective manner. The Commission should be provided with a secretariat of appropriate size and expertise with adequate staff, equipment and resources to fulfil the requirements of the Commission.

68. In particular, the National Assembly should ensure that the Commission is able to perform its tasks of receiving and dealing with complaints and promoting and protecting human rights with independence. The National Assembly should strengthen the Human Rights Commission's capacity to directly receive and deal with complaints by the provision of adequate staff, and the Commission's ability, on its own initiative, to travel throughout the country for the promotion and protection of human rights and the handling of complaints from outside Phnom Penh.

69. In addition, it is vital that the Commission:

(a) Reviews all bills and existing laws which relate to human rights, to ensure their conformity with international human rights standards;

(b) Logs, acknowledges and follows up all complaints properly by effective investigation;

(c) Informs complainants without delay of its decisions and the reasons for such decisions;

(d) Provides an annual report to the National Assembly which is publicly available and reported in the media containing statistical and other information concerning its work;

(e) Publishes a newsletter; and

(f) Regularly informs the people of Cambodia of its work by way of participation of its members in interviews and other media programmes.

70. The Government should ensure that the recommendations made by the Commission for the resolution of complaints are effectively and speedily implemented and appropriate remedies are provided to victims.

71. The Cambodia office of the United Nations Centre for Human Rights, in conjunction with the Inter-Parliamentary Union, interested United Nations agencies, NGOs and private bodies should conduct a workshop in Phnom Penh in 1994 on the operations of parliamentary human rights bodies. Such a workshop should include experts with appropriate experience on the handling and determination of complaints, the applicable constitutional and international human rights law and the propagation of human rights principles in the community. It would be desirable that participants in such a workshop should include:

(a) Members of the Human Rights Commission of the Cambodian National Assembly;

(b) Other members of the National Assembly;

(c) Officials of the Royal National Government;

(d) Members of the judiciary;

(e) Cambodian NGOS; and

(f) Appropriate experts.

72. If funds are available, it would be desirable to provide occasional visits by members and staff of the Human Rights Commission of the National Assembly to visit foreign parliamentary and human rights bodies.

73. The Cambodia office of the United Nations Centre for Human Rights should, with the approval of the Human Rights Commission of the National Assembly, contact appropriate parliamentary and human rights bodies to suggest that they sponsor visits of members to Cambodia to share experiences and discuss common problems.

74. The possibility of establishing other independent agencies for the promotion and protection of human rights in Cambodia and the reception and resolution of complaints should be kept under consideration by the Royal National Government of Cambodia, the National Assembly and the Human Rights Commission of the National Assembly. Such consideration should take into account:

(a) The experience of the Human Rights Commission of the National Assembly of Cambodia and its capacity within its resources and the legislative duties of its members to discharge their functions with efficiency and effectiveness; and

(b) The sustainability in the special conditions of Cambodia of the creation of an independent national institution for the promotion and protection of human rights, such as an Ombudsman, a Defender of the People, or a human rights commission as in numerous other countries. Such an institution would not replace the Human Rights Commission of the National Assembly of Cambodia, but would complement its work.

## 12. Security

75. The United Nations Commission on Human Rights should call upon all States Members of the United Nations to recognize and support the efforts of the Royal National Government of Cambodia in establishing a civil society in that country and that Governments and armed forces of such countries should desist from support, explicit or tacit, to **those armed groups** which have refused or failed to participate in the moves of Cambodia towards democracy and respect for human rights.

76. The Commission on Human Rights should urge all States Members of the United Nations to adopt laws and strict practices to police the manufacture, supply and export of land-mines (particularly anti-personnel) many of which have been, and are being, installed in Cambodia with devastating consequences for the human rights of individuals injured and for the human rights of all in a society which is thereby destabilized.

77. The Special Representative welcomes the recent statement by King Sihanouk Varman calling for the immediate cessation of all mining in Cambodia by military personnel. The Commission on Human Rights should recommend to the Royal National Government of Cambodia that it consider drafting appropriate legislation to ban and make illegal and punishable by law the import as well as the use of mines in Cambodia.

78. The Commission on Human Rights should call upon all States Members of the United Nations to assist in the removal of mines in Cambodia, which continue to cause terrible damage to human lives and property and severely to affect the rights to life, health, adequate food and freedom of movement. Member States should provide technical assistance and monetary support to the organizations which are engaged in the removal of mines in Cambodia. Without support from the international community, the people of Cambodia will continue to suffer this blight for a very long time to come.

79. The Commission on Human Rights should urge the Secretary-General to convene an international conference for an urgent review of the Convention on Prohibitions and Restrictions on the Use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or to have Indiscriminate Effects of 1980 to ban the manufacture, supply and export of anti-personnel land-mines.

## 13. Conduct of Peace-keeping and other United Nations officials

80. The Commission on Human Rights may wish to recommend to the Secretary-General to issue guidelines based on the experience of UNTAC in Cambodia. Such guidelines would govern the recruitment, briefing and training of peace-keeping and other United Nations personnel. These guidelines would address at least the following:

(a) Instruction in the social relations of personnel with the host population, including in cultural and moral norms of behaviour in the country;

(b) Instruction in relation to proper sexual practices including, where appropriate, contraception and safe sexual practices to prevent the global spread of HIV/AIDS;

(c) The availability of free testing for HIV and other sexually transmitted diseases; and

(d) The provision of on-base recreation and sporting facilities.

81. Guided by the experience of UNTAC in Cambodia and the general lessons of experience from other United Nations peace-keeping activities, the Secretary-General could issue a code of conduct applicable to all United Nations peace-keeping personnel, regardless of their country of origin. Consideration should also be given to the establishment in each case of a monitoring body to:

(a) Receive complaints, investigate and issue appropriate sanctions for misconduct; and

(b) Monitor behaviour and make recommendations.

82. The Commission on Human Rights may wish to recommend to the Secretary-General the adoption of adequate measures to assist in the support of abandoned children of UNTAC personnel and to assist in the settlement of other proper claims against UNTAC.

## 14. International obligations

83. The Government of Cambodia should fulfil its obligations under the United Nations conventions on human rights which it has ratified. The Centre for Human Rights and other agencies should provide it with advice and guidance on fulfilment of its reporting obligations.

84. The Government of Cambodia should consider acceding to the first Optional Protocol to the International Covenant on Civil and Political Rights to allow the consideration by the Human Rights Committee of individual allegations of human rights violations under the Covenant.

85. To consider its obligations under international human rights instruments to which it is a party, Cambodia should consider:

(a) Establishing a specific mandate of the Human Rights Commission of the National Assembly to advise the Assembly on the conformity of laws introduced for enactment with such international obligations; and

(b) Creating an inter-ministerial committee to prepare the reports which Cambodia must submit to United Nations treaty bodies under the relevant conventions.

86. The Cambodia office of the United Nations Centre for Human Rights should continue to provide assistance, as requested, to the Human Rights Commission of the National Assembly and any such inter-ministerial committee in ensuring that laws and practices in Cambodia comply with international human rights law.

87. The Kingdom of Cambodia should complete without delay the agreement between the United Nations and the Government of the Kingdom of Cambodia regulating the operations of the office of the Centre for Human Rights in Cambodia and the implementation of a human rights technical cooperation programme. Such an agreement includes the necessary provisions with respect to the status of the Cambodia office of the Centre for Human Rights, privileges and immunities, facilities as well as the human rights programme to be implemented in Cambodia.

88. The United Nations Advisory Committee on Administrative and Budgetary Questions should decide without delay the budget for the biennium 1994-1995 to finance the staff and the operation of the Cambodia office of the Centre for Human Rights as proposed by the Centre for Human Rights and as approved. The activities of the Cambodia office of the United Nations Centre for Human Rights should not be restricted to Phnom Penh. The necessary funds should be provided to enable the Cambodia office to operate in the provinces. As a first step, it will be necessary to open a provincial office in Battambang. The head of the Cambodia office of the United Nations Centre for Human Rights should be appointed without delay in order to take charge of the Centre's

mission in Cambodia and to ensure the continuing fulfilment of the obligations of the Centre to assist the Government of Cambodia in the promotion and protection of human rights **as mandated by the Commission on Human Rights and envisaged in:**

(a) This report and future reports; and

(b) The programme of the Cambodia Office of the United Nations Centre for Human Rights, as approved.

89. The Government of the Kingdom of Cambodia may wish to consider sending a delegation, at the highest possible level, during the consideration of the report on Cambodia by the Commission on Human Rights at its fiftieth session, in order to permit the most fruitful dialogue between the representatives of the Kingdom of Cambodia and the Commission on Human Rights in relation to:

(a) Tne matters dealt with in this report;

(b) The needs of Cambodia for further technical advice and assistance - whether from the Centre for Human Rights, other United Nations agencies or bilateral assistance between Member States and Cambodia - in order to assist Cambodia to meet its international and constitutional obligations for the promotion and protection of human rights.

---